

House Daily Reader

Monday, March 03, 2003

Bills Included				
HB 1047	HB 1122	HB 1215	SB 63	SB 71
SB 116	SB 121	SB 123	SB 129	SB 133
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State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0280

SENATE COMMERCE COMMITTEE ENGROSSED NO. **HB 1047** - 02/25/2003

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the requirements for
2 utilization review and grievances for health carriers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-17C-1 be amended to read as follows:

5 58-17C-1. Terms used in this chapter mean:

6 (1) "Adverse determination," ~~α~~ any of the following:

7 (a) A determination by a health carrier or its designee utilization review
8 organization that ~~an admission, availability of care, continued stay, or other~~
9 ~~health care service has been reviewed and~~, based upon the information
10 provided, a request by a covered person for a benefit under the health carrier's
11 health benefit plan upon application of any utilization review technique does
12 not meet the health carrier's requirements for medical necessity,
13 appropriateness, health care setting, level of care or effectiveness; or is
14 determined to be experimental or investigational and the requested ~~service~~
15 benefit is therefore denied, reduced, or terminated or payment is not provided



1 or made, in whole or in part, for the benefit;

2 (b) The denial, reduction, termination, or failure to provide or make payment in
3 whole or in part, for a benefit based on a determination by a health carrier or
4 its designee utilization review organization of a covered person's eligibility to
5 participate in the health carrier's health benefit plan; or

6 (c) Any prospective review or retrospective review determination that denies,
7 reduces, terminates, or fails to provide or make payment, in whole or in part,
8 for a benefit;

9 (2) "Amblatory review," utilization review of health care services performed or provided
10 in an outpatient setting;

11 (3) "Authorized representative," a person to whom a covered person has given express
12 written consent to represent the covered person for purposes of this Act, a person
13 authorized by law to provide substituted consent for a covered person, a family
14 member of the covered person or the covered person's treating health care
15 professional if the covered person is unable to provide consent, or a health care
16 professional if the covered person's health benefit plan requires that a request for a
17 benefit under the plan be initiated by the health care professional. For any urgent care
18 request, the term includes a health care professional with knowledge of the covered
19 person's medical condition;

20 (4) "Case management," a coordinated set of activities conducted for individual patient
21 management of serious, complicated, protracted, or other health conditions;

22 ~~(4)~~(5) "Certification," a determination by a health carrier or its designee utilization review
23 organization that ~~an admission, availability of care, continued stay, or other health~~
24 ~~care service~~ a request for a benefit under the health carrier's health benefit plan has

1 been reviewed and, based on the information provided, satisfies the health carrier's
2 requirements for medical necessity, appropriateness, health care setting, level of care,
3 and effectiveness;

4 ~~(5)~~(6) "Closed plan," a managed care plan or health carrier that requires covered persons to
5 use participating providers under the terms of the managed care plan or health carrier
6 and does not provide any benefits for out-of-network services except for emergency
7 services;

8 ~~(6)~~(7) "Concurrent review," utilization review conducted during a patient's hospital stay or
9 course of treatment in a facility or other inpatient or outpatient health care setting;

10 ~~(7)~~(8) "Consumer," someone in the general public who may or may not be a covered person
11 or a purchaser of health care, including employers;

12 ~~(8)~~(9) "Covered benefits" or "benefits," those health care services to which a covered person
13 is entitled under the terms of a health benefit plan;

14 ~~(9)~~(10) "Covered person," a policyholder, subscriber, enrollee, or other individual
15 participating in a health benefit plan;

16 ~~(10)~~(11) "Director," the director of the Division of Insurance;

17 ~~(11)~~(12) "Discharge planning," the formal process for determining, prior to discharge
18 from a facility, the coordination and management of the care that a patient
19 receives following discharge from a facility;

20 ~~(12)~~(13) "Discounted fee for service," a contractual arrangement between a health
21 carrier and a provider or network of providers under which the provider is
22 compensated in a discounted fashion based upon each service performed and
23 under which there is no contractual responsibility on the part of the provider
24 to manage care, to serve as a gatekeeper or primary care provider, or to

1 provide or assure quality of care. A contract between a provider or network
2 of providers and a health maintenance organization is not a discounted fee for
3 service arrangement;

4 ~~(13)~~(14) "Emergency medical condition," the sudden and, at the time, unexpected onset
5 of a health condition that requires immediate medical attention, if failure to
6 provide medical attention would result in serious impairment to bodily
7 functions or serious dysfunction of a bodily organ or part, or would place the
8 person's health in serious jeopardy;

9 ~~(14)~~(15) "Emergency services," health care items and services furnished or required to
10 evaluate and treat an emergency medical condition;

11 ~~(15)~~(16) "Facility," an institution providing health care services or a health care setting,
12 including hospitals and other licensed inpatient centers, ambulatory surgical or
13 treatment centers, skilled nursing centers, residential treatment centers,
14 diagnostic, laboratory, and imaging centers, and rehabilitation, and other
15 therapeutic health settings;

16 ~~(16)~~(17) "Grievance," a written complaint, or oral complaint if the complaint involves
17 an urgent care request, submitted by or on behalf of a covered person
18 regarding:

- 19 (a) Availability, delivery, or quality of health care services;
20 (b) Claims payment, handling, or reimbursement for health care services;
21 (c) Any other matter pertaining to the contractual relationship between a covered
22 person and the health carrier.

23 A request for an expedited review need not be in writing;

24 ~~(17)~~(18) "Health benefit plan," a policy, contract, certificate, or agreement entered into,

1 offered, or issued by a health carrier to provide, deliver, arrange for, pay for,
2 or reimburse any of the costs of health care services;

3 ~~(18)~~(19) "Health care professional," a physician or other health care practitioner
4 licensed, accredited, or certified to perform specified health services consistent
5 with state law;

6 ~~(19)~~(20) "Health care provider" or "provider," a health care professional or a facility;

7 ~~(20)~~(21) "Health care services," services for the diagnosis, prevention, treatment, cure,
8 or relief of a health condition, illness, injury, or disease;

9 ~~(21)~~(22) "Health carrier," an entity subject to the insurance laws and regulations of this
10 state, or subject to the jurisdiction of the director, that contracts or offers to
11 contract, or enters into an agreement to provide, deliver, arrange for, pay for,
12 or reimburse any of the costs of health care services, including a sickness and
13 accident insurance company, a health maintenance organization, a nonprofit
14 hospital and health service corporation, or any other entity providing a plan of
15 health insurance, health benefits, or health services;

16 ~~(22)~~(23) "Health indemnity plan," a health benefit plan that is not a managed care plan
17 or health carrier;

18 ~~(23)~~(24) "Intermediary," a person authorized to negotiate and execute provider
19 contracts with health carriers on behalf of health care providers or on behalf of
20 a network;

21 ~~(24)~~(25) "Managed care contractor," a person who establishes, operates, or maintains
22 a network of participating providers; or contracts with an insurance company,
23 a hospital or medical service plan, an employer, an employee organization, or
24 any other entity providing coverage for health care services to operate a

1 managed care plan or health carrier;

2 ~~(25)~~(26) "Managed care entity," a licensed insurance company, hospital or medical
3 service plan, health maintenance organization, or an employer or employee
4 organization, ~~or a managed care contractor~~ that operates a managed care plan
5 ~~or health carrier~~ or a managed care contractor. The term does not include a
6 licensed insurance company unless it contracts with other entities to provide
7 a network of participating providers;

8 ~~(26)~~(27) "Managed care plan," a plan operated by a managed care entity that provides
9 for the financing or delivery of health care services, or both, to persons
10 enrolled in the plan through any of the following:

- 11 (a) Arrangements with selected providers to furnish health care services;
12 (b) Explicit standards for the selection of participating providers; or
13 (c) Financial incentives for persons enrolled in the plan to use the participating
14 providers and procedures provided for by the plan;

15 ~~(27)~~(28) "Necessary information," includes the results of any face-to-face clinical
16 evaluation or second opinion that may be required;

17 ~~(28)~~(29) "Network," the group of participating providers providing services to a health
18 carrier;

19 ~~(29)~~(30) "Open plan," a managed care plan or health carrier other than a closed plan that
20 provides incentives, including financial incentives, for covered persons to use
21 participating providers under the terms of the managed care plan or health
22 carrier;

23 ~~(30)~~(31) "Participating provider," a provider who, under a contract with the health
24 carrier or with its contractor or subcontractor, has agreed to provide health

care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly, from the health carrier;

(31)(32) "Prospective review," utilization review conducted prior to an admission or the provision of a health care service or a course of treatment in accordance with a health carrier's requirement that the health care service or course of treatment, in whole or in part, be approved prior to its provision;

(32)(33) "Quality assessment," the measurement and evaluation of the quality and outcomes of medical care provided to individuals, groups, or populations;

(33)(34) "Quality improvement," the effort to improve the processes and outcomes related to the provision of care within the health plan;

(34)(35) "Retrospective review," ~~utilization review of medical necessity that is conducted after services have been provided to a patient, but~~ any review of a request for a benefit that is not a prospective review request, which does not include the review of a claim that is limited to ~~an evaluation of reimbursement levels;~~ veracity of documentation, or accuracy of coding, or adjudication for payment;

(35)(36) "Second opinion," an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health care service to assess the ~~clinical~~ medical necessity and appropriateness of the initial proposed health care service;

(36)(37) "Secretary," the secretary of the Department of Health;

(37)(38) "Stabilized," with respect to an emergency medical condition, that no material deterioration of the condition is likely, with reasonable medical probability, to

1 result or occur before an individual can be transferred;

2 ~~(38)~~(39) "Utilization review," a set of formal techniques used by a managed care plan
3 or utilization review organization to monitor and evaluate the ~~clinical~~ medical
4 necessity, appropriateness, and efficiency of health care services and
5 procedures including techniques such as ambulatory review, prospective
6 review, second opinion, certification, concurrent review, case management,
7 discharge planning, and retrospective review; and

8 ~~(39)~~(40) "Utilization review organization," an entity that conducts utilization review
9 other than a health carrier performing utilization review for its own health
10 benefit plans.

11 Section 2. That § 58-17C-37 be amended to read as follows:

12 58-17C-37. A health carrier that ~~conducts~~ requires a request for benefits under the covered
13 person's health plan to be subjected to utilization review shall implement a written utilization
14 review program that describes all review activities, both delegated and nondelegated, ~~for covered~~
15 ~~services provided for:~~

16 (1) The filing of benefit requests;

17 (2) The notification of utilization review and benefit determinations; and

18 (3) The review of adverse determinations in accordance with §§ 58-17C-58 to 58-17C-
19 63, inclusive.

20 The program document shall describe the following:

21 (1) Procedures to evaluate the ~~clinical~~ medical necessity, appropriateness, efficacy, or
22 efficiency of health care services;

23 (2) Data sources and clinical review criteria used in decision-making;

24 ~~(3) The process for conducting appeals of adverse determinations;~~

- 1 ~~—(4)—~~ Mechanisms to ensure consistent application of review criteria and compatible
- 2 decisions;
- 3 ~~(5)~~(4) Data collection processes and analytical methods used in assessing utilization of health
- 4 care services;
- 5 ~~(6)~~(5) Provisions for assuring confidentiality of clinical and proprietary information;
- 6 ~~(7)~~(6) The organizational structure that periodically assesses utilization review activities and
- 7 reports to the health carrier's governing body; and
- 8 ~~(8)~~(7) The staff position functionally responsible for day-to-day program management.

9 A health carrier shall prepare an annual summary report in the format specified of its
10 utilization review program activities and file the report, if requested, with the director and the
11 secretary of the Department of Health.

12 Section 3. That § 58-17C-40 be amended to read as follows:

13 58-17C-40. A health carrier shall issue utilization review ~~decisions~~ and benefit determinations
14 in a timely manner pursuant to the requirements of §§ 58-17C-34 to 58-17C-57, inclusive. ~~A~~
15 ~~health carrier shall obtain all information required to make a utilization review decision, including~~
16 ~~pertinent clinical information.~~ A health carrier shall have a process to ensure that utilization
17 reviewers apply clinical review criteria in conducting utilization review consistently.

18 Section 4. That § 58-17C-46 be amended to read as follows:

19 58-17C-46. When conducting utilization review, the health carrier shall collect only the
20 information necessary, including pertinent clinical information, to ~~certify the admission,~~
21 ~~procedure or treatment, length of stay, frequency, and duration of services~~ make the utilization
22 review or benefit determination.

23 Section 5. That § 58-17C-48 be amended to read as follows:

24 58-17C-48. A health carrier shall maintain written procedures pursuant to this chapter for

1 making standard utilization review ~~decisions~~ and benefit determinations on requests submitted
2 to the health carrier by covered persons or their authorized representatives for benefits and for
3 notifying covered persons and providers acting on behalf of covered persons of its decisions their
4 authorized representatives of its determinations with respect to these requests within the
5 specified time frames required under this chapter. In the event that a period of time is extended
6 as permitted by this Act, due to a claimant's failure to submit information necessary to decide a
7 prospective, retrospective, or disability claim, the period for making the benefit determination
8 shall be tolled from the date on which the notification of the extension is sent to the claimant until
9 the date on which the claimant responds to the request for additional information.

10 Section 6. That § 58-17C-49 be amended to read as follows:

11 58-17C-49. For ~~initial~~ prospective review determinations, other than allowed by this section,
12 a health carrier shall make the determination and notify the covered person or, if applicable, the
13 covered person's authorized representative of the determination, whether the carrier certifies the
14 provision of the benefit or not, within two working a reasonable period of time appropriate to
15 the covered person's medical condition, but in no event later than fifteen days of obtaining all
16 necessary information regarding a proposed admission, procedure, or service requiring a review
17 determination: after the date the health carrier receives the request. If the determination is an
18 adverse determination, the health carrier shall make the notification of the adverse determination
19 in accordance with § 58-17C-52.

20 ~~—(1)— In the case of a determination to certify an admission, procedure, or service, the~~
21 ~~health carrier shall notify the provider rendering the service by telephone within~~
22 ~~twenty-four hours of making the initial certification. If the admission, procedure, or~~
23 ~~service is not certified or if a confirmation code or number is not provided upon~~
24 ~~certification of the admission, procedure, or service, the health carrier shall provide~~

1 ~~written or electronic confirmation of the telephone notification to the covered person~~
2 ~~and the provider within two working days of making the initial certification.~~

3 ~~— (2) — In the case of an adverse determination, the health carrier shall notify the provider~~
4 ~~rendering the service by telephone within twenty-four hours of making the adverse~~
5 ~~determination; and shall provide written or electronic confirmation of the telephone~~
6 ~~notification to the covered person and the provider within one working day of making~~
7 ~~the adverse determination.~~

8 The time period for making a determination and notifying the covered person or, if
9 applicable, the covered person's authorized representative of the determination pursuant to this
10 section may be extended once by the health carrier for up to fifteen days, if the health carrier:

11 (1) Determines that an extension is necessary due to matters beyond the health carrier's
12 control; and

13 (2) Notifies the covered person or, if applicable, the covered person's authorized
14 representative, prior to the expiration of the initial fifteen-day time period, of the
15 circumstances requiring the extension of time and the date by which the health carrier
16 expects to make a determination.

17 If the extension is necessary due to the failure of the covered person or the covered person's
18 authorized representative to submit information necessary to reach a determination on the
19 request, the notice of extension shall specifically describe the required information necessary to
20 complete the request; and give the covered person or, if applicable, the covered person's
21 authorized representative at least forty-five days from the date of receipt of the notice to provide
22 the specified information.

23 If the health carrier receives a prospective review request from a covered person or the
24 covered person's authorized representative that fails to meet the health carrier's filing procedures,

1 the health carrier shall notify the covered person or, if applicable, the covered person's authorized
2 representative of this failure and provide in the notice information on the proper procedures to
3 be followed for filing a request. This notice shall be provided as soon as possible, but in no event
4 later than five days following the date of the failure. The health carrier may provide the notice
5 orally or, if requested by the covered person or the covered person's authorized representative,
6 in writing. The provisions only apply in a case of failure that is a communication by a covered
7 person or the covered person's authorized representative that is received by a person or
8 organizational unit of the health carrier responsible for handling benefit matters and is a
9 communication that refers to a specific covered person, a specific medical condition or symptom,
10 and a specific health care service, treatment, or provider for which certification is being
11 requested.

12 Section 7. That § 58-17C-50 be amended to read as follows:

13 58-17C-50. ~~For concurrent review determinations, a health carrier shall make the~~
14 ~~determination within one working day of obtaining all necessary information:~~

15 ~~— (1) — In the case of a determination to certify an extended stay or additional services, the~~
16 ~~health carrier shall notify by telephone the provider rendering the service within one~~
17 ~~working day of making the certification; and the health carrier shall provide written~~
18 ~~or electronic confirmation to the covered person and the provider within one working~~
19 ~~day after the telephone notification. The written notification shall include the number~~
20 ~~of extended days or next review date, the new total number of days or services~~
21 ~~approved, and the date of admission or initiation of services:~~

22 ~~— (2) — In the case of an adverse determination, the health carrier shall notify by telephone the~~
23 ~~provider rendering the service within twenty-four hours of making the adverse~~
24 ~~determination; and the health carrier shall provide written or electronic notification~~

1 ~~to the covered person and the provider within one working day of the telephone~~
2 ~~notification.~~

3 ~~—For concurrent review determinations, if a health carrier has certified an ongoing course of~~
4 ~~treatment to be provided over a period of time or number of treatments:~~

5 (1) Any reduction or termination by the health carrier during the course of treatment
6 before the end of the period or number treatments, other than by health benefit plan
7 amendment or termination of the health benefit plan, shall constitute an adverse
8 determination; and

9 (2) The health carrier shall notify the covered person of the adverse determination in
10 accordance with § 58-17C-52 at a time sufficiently in advance of the reduction or
11 termination to allow the covered person or, if applicable, the covered person's
12 authorized representative to file a grievance to request a review of the adverse
13 determination pursuant to sections 31 to 53, inclusive, of this Act and obtain a
14 determination with respect to that review of the adverse determination before the
15 benefit is reduced or terminated

16 The health care service or treatment that is the subject of the adverse determination shall be
17 continued without liability to the covered person until the covered person has been notified of
18 the determination by the health carrier with respect to the internal review request made pursuant
19 to sections 31 to 53, inclusive, of this Act.

20 Section 8. That § 58-17C-51 be amended to read as follows:

21 58-17C-51. For retrospective review determinations, a health carrier shall make the
22 determination within a reasonable period of time, but in no event later than thirty working
23 ~~of receiving all necessary information:~~ after the date of receiving the benefit request.

24 ~~(1)~~ In the case of a certification, the health carrier may notify in writing the covered person

1 and the provider rendering the service.

2 ~~(2) In the case of an adverse determination, the health carrier shall notify in writing the~~
3 ~~provider rendering the service and the covered person within five working days of making the~~
4 ~~adverse determination. If the determination is an adverse determination, the health carrier shall~~
5 ~~provide notice of the adverse determination to the covered person or, if applicable, the covered~~
6 ~~person's authorized representative in accordance with § 58-17C-52. The time period for making~~
7 ~~a determination and notifying the covered person or, if applicable, the covered person's~~
8 ~~authorized representative of the determination pursuant to this section may be extended once by~~
9 ~~the health carrier for up to fifteen days, provided the health carrier:~~

10 (1) Determines that an extension is necessary due to matters beyond the health carrier's
11 control; and

12 (2) Notifies the covered person or, if applicable, the covered person's authorized
13 representative, prior to the expiration of the initial thirty-day time period, of the
14 circumstances requiring the extension of time and the date by which the health carrier
15 expects to make a determination.

16 If the extension under this section is necessary due to the failure of the covered person or,
17 if applicable, the covered person's authorized representative to submit information necessary to
18 reach a determination on the request, the notice of extension shall specifically describe the
19 required information necessary to complete the request; and give the covered person or, if
20 applicable, the covered person's authorized representative at least forty-five days from the date
21 of receipt of the notice to provide the specified information.

22 Section 9. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
23 as follows:

24 For purposes of calculating the time periods within which a determination is required to be

made for prospective and retrospective reviews, the time period within which the determination is required to be made begins on the date the request is received by the health carrier in accordance with the health carrier's procedures established pursuant to § 58-17C-37. If the time period for making the determination for a prospective or retrospective review is extended due to the covered person or, if applicable, the covered person's authorized representative's failure to submit the information necessary to make the determination, the time period for making the determination shall be tolled from the date on which the health carrier sends the notification of the extension to the covered person or, if applicable, the covered person's authorized representative until the earlier of: the date on which the covered person or, if applicable, the covered person's authorized representative responds to the request for additional information or the date on which the specified information was to have been submitted. If the covered person or the covered person's authorized representative fails to submit the information before the end of the period of the extension, as specified in §§ 58-17C-49 and 58-17C-51, the health carrier may deny the certification of the requested benefit.

Section 10. That § 58-17C-52 be amended to read as follows:

58-17C-52. Any ~~written~~ notification of an adverse determination under this section shall ~~include the principal,~~ in a manner which is designed to be understood by the covered person, set forth:

- (1) The specific reason or reasons for the adverse determination, ~~the instructions for initiating an appeal, grievance, or reconsideration of the determination, and the instructions;~~
- (2) A reference to the specific plan provision on which the determination is based;
- (3) A description of additional material or information necessary for the covered person to complete the benefit request, including an explanation of why the material or

1 information is necessary to complete the request;

2 (4) A description of the health carrier's grievance procedures established pursuant to
3 sections 31 to 53, inclusive, of this Act, including time limits applicable to those
4 procedures;

5 (5) If the health carrier relied upon an internal rule, guideline, protocol, or other similar
6 criterion to make the adverse determination, either the specific rule, guideline,
7 protocol, or other similar criterion or a statement that a specific rule, guideline,
8 protocol, or other similar criterion was relied upon to make the adverse determination
9 and that a copy of the rule, guideline, protocol, or other similar criterion will be
10 provided free of charge to the covered person upon request;

11 (6) If the adverse determination is based on a medical necessity or experimental or
12 investigational treatment or similar exclusion or limit, either an explanation of the
13 scientific or clinical judgment for making the determination, applying the terms of the
14 health benefit plan to the covered person's medical circumstances or a statement that
15 an explanation will be provided to the covered person free of charge upon request;

16 (7) If applicable, instructions for requesting a:

17 (a) A copy of the rule, guideline, protocol, or other similar criterion relied upon
18 in making the adverse determination, as provided in subdivision (5) of this
19 section; or

20 (b) The written statement of the scientific or clinical rationale used to make for the
21 adverse determination, as provided in subdivision (6) of this section; and

22 (8) A statement explaining the right of the covered person, as appropriate, to contact the
23 Division of Insurance at any time for the assistance or, upon completion of the health
24 carrier's grievance procedure process as provided under sections 31 to 53, inclusive,

1 of this Act, to file a civil suit in a court of competent jurisdiction.

2 A health carrier ~~shall~~ may provide the ~~clinical rationale in writing for an adverse~~
3 ~~determination to any party who received notice of the adverse determination and who follows~~
4 ~~the procedures for a request. The clinical rationale shall contain sufficient specificity to allow the~~
5 ~~covered person to understand the basis of the adverse determination~~ notice required under this
6 section in writing or electronically.

7 Section 11. That § 58-17C-53 be repealed.

8 ~~58-17C-53. A health carrier shall have written procedures to address the failure or inability~~
9 ~~of a provider or a covered person to provide all necessary information for review. If the provider~~
10 ~~or a covered person will not release necessary information, the health carrier may deny~~
11 ~~certification.~~

12 Section 12. That § 58-17C-54 be amended to read as follows:

13 58-17C-54. In the certificate of coverage or member handbook provided to covered persons,
14 a health carrier shall include a clear and comprehensive description of its utilization review
15 procedures, including the procedures for obtaining review of adverse determinations, and a
16 statement of rights and responsibilities of covered persons with respect to those procedures. A
17 health carrier shall include a summary of its utilization review and benefit determination
18 procedures in materials intended for prospective covered persons. A health carrier shall print on
19 its membership cards a toll-free telephone number to call for utilization review and benefit
20 decisions.

21 Section 13. That § 58-17C-27 be amended to read as follows:

22 58-17C-27. A health carrier shall cover emergency services necessary to screen and stabilize
23 a covered person and may not require prior authorization of such services if a prudent layperson
24 ~~acting reasonably~~ would have reasonably believed that an emergency medical condition existed.

1 With respect to care obtained from a noncontracting provider within the service area of a
2 managed care plan, a health carrier shall cover emergency services necessary to screen and
3 stabilize a covered person and may not require prior authorization of such services if a prudent
4 layperson would have reasonably believed that use of a contracting provider would result in a
5 delay that would worsen the emergency, or if a provision of federal, state, or local law requires
6 the use of a specific provider. The coverage shall be at the same benefit level as if the service or
7 treatment had been rendered by a participating provider.

8 A health carrier shall cover emergency services if the plan, acting through a participating
9 provider or other ~~authorized~~ designated representative of the health carrier, has authorized the
10 provision of emergency services.

11 Section 14. That § 58-17C-28 be amended to read as follows:

12 58-17C-28. If a participating provider or other ~~authorized~~ designated representative of a
13 health carrier authorizes emergency services, the health carrier may not ~~retroactively deny~~
14 subsequently retract its authorization after the emergency services have been provided, or reduce
15 payment for a covered expense an item or service furnished in reliance on approval, unless the
16 approval was based on a material misrepresentation about the covered person's health condition
17 made by the provider of emergency services.

18 Section 15. That § 58-17C-30 be amended to read as follows:

19 58-17C-30. For immediately required post-evaluation or post-stabilization services, a health
20 carrier shall provide access to ~~an authorized~~ a designated representative twenty-four hours a day,
21 seven days a week, to facilitate review, or otherwise provide coverage with no financial penalty
22 to the covered person.

23 Section 16. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
24 as follows:

1 A health carrier shall establish written procedures in accordance with sections 16 to 24,
2 inclusive, of this Act, for receiving benefit requests from covered persons or their authorized
3 representatives and for making and notifying covered persons or their authorized representatives
4 of expedited utilization review and benefit determinations with respect to urgent care requests
5 and concurrent review urgent care requests.

6 Section 17. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
7 as follows:

8 For an urgent care request, unless the covered person or the covered person's authorized
9 representative has failed to provide sufficient information for the health carrier to determine
10 whether, or to what extent, the benefits requested are covered benefits or payable under the
11 health carrier's health benefit plan, the health carrier shall notify the covered person or, if
12 applicable, the covered person's authorized representative of the health carrier's determination
13 with respect to the request, whether or not the determination is an adverse determination, as
14 soon as possible, taking into account the medical condition of the covered person, but in no
15 event later than seventy-two hours after the date of the receipt of the request by the health
16 carrier. If the health carrier's determination is an adverse determination, the health carrier shall
17 provide notice of the adverse determination in accordance with section 24 of this Act.

18 Section 18. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 If the covered person or, if applicable, the covered person's authorized representative has
21 failed to provide sufficient information for the health carrier to make a determination, the health
22 carrier shall notify the covered person or, if applicable, the covered person's authorized
23 representative either orally or, if requested by the covered person or the covered person's
24 authorized representative, in writing of this failure and state what specific information is needed

as soon as possible, but in no event later than twenty-four hours after receipt of the request.

Section 19. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

If the benefit request involves a prospective review urgent care request, the provisions of section 18 of this Act apply only in the case of a failure that:

(1) Is a communication by a covered person or, if applicable, the covered person's authorized representative that is received by a person or organizational unit of the health carrier responsible for handling benefit matters; and

(2) Is a communication that refers to a specific covered person, a specific medical condition or symptom, and a specific health care service, treatment, or provider for which approval is being requested.

Section 20. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

The health carrier shall provide the covered person or, if applicable the covered person's authorized representative a reasonable period of time to submit the necessary information, taking into account the circumstances, but in no event less than forty-eight hours after the date of notifying the covered person or the covered person's authorized representative of the failure to submit sufficient information, as provided in sections 18 and 19 of this Act.

Section 21. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

The health carrier shall notify the covered person or, if applicable, the covered person's authorized representative of its determination with respect to the urgent care request as soon as possible, but in no event more than forty-eight hours after the earlier of:

(1) The health carrier's receipt of the requested specified information; or

(2) The end of the period provided for the covered person or, if applicable, the covered person's authorized representative to submit the requested specified information.

If the covered person or the covered person's authorized representative fails to submit the information before the end of the period of the extension, as specified in section 20 of this Act, the health carrier may deny the certification of the requested benefit. If the health carrier's determination is an adverse determination, the health carrier shall provide notice of the adverse determination in accordance with § 58-17C-52.

Section 22. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

For concurrent review urgent care requests involving a request by the covered person or the covered person's authorized representative to extend the course of treatment beyond the initial period of time or the number of treatments, if the request is made at least twenty-four hours prior to the expiration of the prescribed period of time or number of treatments, the health carrier shall make a determination with respect to the request and notify the covered person or, if applicable, the covered person's authorized representative of the determination, whether it is an adverse determination or not, as soon as possible, taking into account the covered person's medical condition but in no event more than twenty-four hours after the date of the health carrier's receipt of the request. If the health carrier's determination is an adverse determination, the health carrier shall provide notice of the adverse determination in accordance with § 58-17C-52. The provisions of sections 17 to 21, inclusive, of this Act apply to concurrent review urgent care requests.

Section 23. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

For purposes of calculating the time periods within which a determination is required to be

1 made under sections 17 to 22, inclusive, of this Act, the time period within which the
2 determination is required to be made shall begin on the date the request is filed with the health
3 carrier in accordance with the health carrier's procedures established pursuant to § 58-17C-37
4 for filing a request without regard to whether all of the information necessary to make the
5 determination accompanies the filing.

6 Section 24. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
7 as follows:

8 If a health carrier's determination with respect to sections 17 to 22, inclusive, of this Act is
9 an adverse determination, the health carrier shall provide notice of the adverse determination in
10 accordance with this section. A notification of an adverse determination under this section shall,
11 in a manner calculated to be understood by the covered person, set forth:

- 12 (1) The specific reason or reasons for the adverse determination;
- 13 (2) A reference to the specific plan provisions on which the determination is based;
- 14 (3) A description of any additional material or information necessary for the covered
15 person to complete the request, including an explanation of why the material or
16 information is necessary to complete the request;
- 17 (4) A description of the health carrier's internal review procedures established pursuant
18 to sections 31 to 53, inclusive, of this Act, including any time limits applicable to
19 those procedures;
- 20 (5) A description of the health carrier's expedited review procedures established pursuant
21 to sections 16 to 24, inclusive, of this Act;
- 22 (6) If the health carrier relied upon an internal rule, guideline, protocol, or other similar
23 criterion to make the adverse determination, either the specific rule, guideline,
24 protocol, or other similar criterion or a statement that a specific rule, guideline,

protocol, or other similar criterion was relied upon to make the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided free of charge to the covered person upon request;

(7) If the adverse determination is based on a medical necessity or experimental or investigation treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for making the determination, applying the terms of the health benefit plan to the covered person's medical circumstances or a statement that an explanation will be provided to the covered person free of charge upon request;

(8) If applicable, instructions for requesting:

(a) A copy of the rule, guideline, protocol, or other similar criterion relied upon in making the adverse determination in accordance with subdivision (6) of this section; or

(b) The written statement of the scientific or clinical rationale for the adverse determination in accordance with subdivision (7) of this section; and

(9) A statement explaining the right of the covered person, as appropriate, to contact the Division of Insurance at any time for assistance or, upon completion of the health carrier's grievance procedure process as provided under sections 31 to 53, inclusive, of this Act, to file a civil suit in a court of competent jurisdiction.

A health carrier may provide the notice required under this section orally, in writing or electronically. If notice of the adverse determination is provided orally, the health carrier shall provide written or electronic notice of the adverse determination within three days following the oral notification.

Section 25. That § 58-17C-58 be amended to read as follows:

58-17C-58. Each ~~managed care plan or utilization review organization~~ health carrier shall

1 establish and maintain a grievance system, approved by the director after consultation with the
2 secretary of the Department of Health, which may include an impartial mediation provision, to
3 provide reasonable procedures for the resolution of grievances initiated by any enrollee
4 concerning the provision of health care services. Mediation may be made available to enrollees
5 unless an enrollee elects to litigate a grievance prior to submission to mediation. No medical
6 malpractice damage claim is subject to arbitration under §§ 58-17C-58 to 58-17C-63, inclusive.
7 Each ~~managed care plan or utilization review organization~~ health carrier shall provide that if a
8 grievance is filed which requires a review of services authorized to be provided by a practitioner
9 or if a grievance is filed which requires a review of treatment which has been provided by a
10 practitioner, the review shall include a ~~similarly licensed peer whose scope of practice includes~~
11 ~~the services or treatment being reviewed~~ health care professional who has appropriate training
12 and experience in the field of medicine involved in the medical judgment.

13 Section 26. That § 58-17C-59 be amended to read as follows:

14 58-17C-59. The ~~managed care plan or utilization review organization~~ health carrier shall
15 maintain records of grievances filed with it and shall submit to the director a summary report at
16 such times and in such format as the director may require. The grievances involving other
17 persons shall be referred to such persons with a copy to the director.

18 Section 27. That § 58-17C-60 be amended to read as follows:

19 58-17C-60. The ~~managed care plan or utilization review organization~~ health carrier shall
20 maintain a record of each grievance filed with it for five years, and the director and the secretary
21 of health shall have access to the records.

22 Section 28. That § 58-17C-61 be repealed.

23 ~~—58-17C-61. The director or the secretary may examine such grievance system provided for~~
24 ~~by § 58-17C-58.~~

Section 29. That § 58-17C-62 be repealed.

~~58-17C-62. Each managed care plan or utilization review organization shall submit to the director and the secretary of health an annual report in a form prescribed by the director, after consultation with the secretary of health, which shall include:~~

~~(1) A description of the procedures of the grievance system provided for by § 58-17C-58; and~~

~~(2) The total number of grievances handled through such grievance system and a compilation of causes underlying the grievances filed.~~

Section 30. That § 58-17C-20 be amended to read as follows:

58-17C-20. Each managed care ~~entity~~ contractor, as defined in § 58-17C-1, shall register with the director prior to engaging in any managed care business in this state. The registration ~~shall be~~ is subject to the provisions of §§ 58-17C-64 to 58-17C-68, inclusive, and any applicable rules promulgated pursuant to those sections.

Section 31. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

A health carrier shall maintain in a register written records to document all grievances received during a calendar year. A request for a first level review of a grievance involving an adverse determination shall be processed in compliance with sections 34 to 37, inclusive, of this Act, but is not required to be included in the register. A request for an additional voluntary review of a grievance involving an adverse determination that may be conducted pursuant to sections 43 to 49, inclusive, of this Act, shall be included in the register. For each grievance the register shall contain, at a minimum, the following information:

(1) A general description of the reason for the grievance;

(2) The date received;

- 1 (3) The date of each review or, if applicable, review meeting;
- 2 (4) Resolution at each level of the grievance, if applicable;
- 3 (5) Date of resolution at each level, if applicable; and
- 4 (6) Name of the covered person for whom the grievance was filed.

5 The register shall be maintained in a manner that is reasonably clear and accessible to the
6 director. A health carrier shall retain the register compiled for a calendar year for five years.

7 Section 32. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
8 as follows:

9 A health carrier shall submit to the director, at least annually, a report in the format specified
10 by the director. The report shall include for each type of health benefit plan offered by the health
11 carrier:

- 12 (1) The certificate of compliance required by section 33 of this Act;
- 13 (2) The number of covered lives;
- 14 (3) The total number of grievances;
- 15 (4) The number of grievances for which a covered person requested an additional
16 voluntary grievance review pursuant to sections 43 to 49, inclusive, of this Act;
- 17 (5) The number of grievances resolved at each level, if applicable, and their resolution;
- 18 (6) The number of grievances appealed to the director of which the health carrier has
19 been informed;
- 20 (7) The number of grievances referred to alternative dispute resolution procedures or
21 resulting in litigation; and
- 22 (8) A synopsis of actions being taken to correct problems identified.

23 Section 33. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
24 as follows:

1 Except as specified of this Act, a health carrier shall use written procedures for receiving and
2 resolving grievances from covered persons, as provided in sections 34 to 49, inclusive, of this
3 Act. A health carrier shall file with the director a copy of the procedures required under this
4 section, including all forms used to process requests made pursuant to sections 34 to 49,
5 inclusive, of this Act. Any subsequent material modifications to the documents also shall be filed.
6 The director may disapprove a filing received in accordance with this section that fails to comply
7 with this Act or applicable rules. In addition, a health carrier shall file annually with the director,
8 as part of its annual report required by sections 31 and 32 of this Act, a certificate of compliance
9 stating that the health carrier has established and maintains, for each of its health benefit plans,
10 grievance procedures that fully comply with the provisions of this Act. A description of the
11 grievance procedures required under this section shall be set forth in or attached to the policy,
12 certificate, membership booklet, outline of coverage, or other evidence of coverage provided to
13 covered persons. The grievance procedure documents shall include a statement of a covered
14 person's right to contact the Division of Insurance for assistance at any time. The statement shall
15 include the telephone number and address of the Division of Insurance.

16 Section 34. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
17 as follows:

18 Within one hundred eighty days after the date of receipt of a notice of an adverse
19 determination sent pursuant to sections 1 to 24, inclusive, of this Act, and to §§ 58-17C-35 to
20 58-17C-37, inclusive, a covered person or the covered person's authorized representative may
21 file a grievance with the health carrier requesting a first level review of the adverse
22 determination. The health carrier shall provide the covered person with the name, address, and
23 telephone number of a person or organizational unit designated to coordinate the first level
24 review on behalf of the health carrier. The health carrier shall designate a health care provider

1 or providers who have appropriate training and experience in the field of medicine involved in
2 the medical judgement to evaluate the adverse determination. No health care provider or
3 providers may have been involved in the initial adverse determination. In conducting the review,
4 the reviewer or reviewers shall take into consideration all comments, documents, records, and
5 other information regarding the request for services submitted by the covered person or the
6 covered person's authorized representative, without regard to whether the information was
7 submitted or considered in making the initial adverse determination.

8 Section 35. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
9 as follows:

10 No covered person has the right to attend, or to have a representative in attendance, at the
11 first level review, but the covered person or, if applicable, the covered person's authorized
12 representative is entitled to:

13 (1) Submit written comments, documents, records, and other material relating to the
14 request for benefits for the review or reviewers to consider when conducting the
15 review; and

16 (2) Receive from the health carrier, upon request and free of charge, reasonable access
17 to, and copies of all documents, records and other information relevant to the covered
18 person's request for benefits. A document, record, or other information shall be
19 considered relevant to a covered person's request for benefits if the document, record,
20 or other information:

21 (a) Was relied upon in making the benefit determination;

22 (b) Was submitted, considered, or generated in the course of making the adverse
23 determination, without regard to whether the document, record, or other
24 information was relied upon in making the benefit determination;

1 (c) Demonstrates that, in making the benefit determination, the health carrier, or
2 its designated representatives consistently applied required administrative
3 procedures and safeguards with respect to the covered person as other similarly
4 situated covered persons; or

5 (d) Constitutes a statement of policy or guidance with respect to the health benefit
6 plan concerning the denied health care service or treatment for the covered
7 person's diagnosis, without regard to whether the advice or statement was
8 relied upon in making the benefit determination.

9 The health carrier shall make the provisions of this section known to the covered person or,
10 if applicable, the covered person's authorized representative within three working days after the
11 date of receipt of the grievance.

12 Section 36. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
13 as follows:

14 A health carrier shall notify and issue a decision in writing or electronically to the covered
15 person or, if applicable, the covered person's authorized representative within the following time
16 frames:

17 (1) With respect to a grievance requesting a first level review of an adverse determination
18 involving a prospective review request, the health carrier shall notify and issue a
19 decision within a reasonable period of time that is appropriate given the covered
20 person's medical condition, but no later than thirty days after the date of the health
21 carrier's receipt of the grievance requesting the first level review made pursuant to
22 section 34 of this Act; or

23 (2) With respect to a grievance requesting a first level review of an adverse determination
24 involving a retrospective review request, the health carrier shall notify and issue a

1 decision within a reasonable period of time, but no later than sixty days after the date
2 of the health carrier's receipt of the grievance requesting the first level review made
3 pursuant to section 34 of this Act.

4 For purposes of calculating the time periods within which a determination is required to be
5 made and notice provided under this section, the time period shall begin on the date the
6 grievance requesting the review is filed with the health carrier in accordance with the health
7 carrier's procedures established pursuant to section 33 of this Act for filing a request without
8 regard to whether all of the information necessary to make the determination accompanies the
9 filing.

10 Section 37. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
11 as follows:

12 The decision issued pursuant to section 36 of this Act shall set forth in a manner calculated
13 to be understood by the covered person or, if applicable, the covered person's authorized
14 representative and include the following:

- 15 (1) The titles and qualifying credentials of the person or persons participating in the first
16 level review process (the reviewers);
- 17 (2) A statement of the reviewers' understanding of the covered person's grievance;
- 18 (3) The reviewers' decision in clear terms and the contract basis or medical rationale in
19 sufficient detail for the covered person to respond further to the health carrier's
20 position;
- 21 (4) A reference to the evidence or documentation used as the basis for the decision;
- 22 (5) For a decision involving an adverse determination:
 - 23 (a) The specific reason or reasons for the adverse determination;
 - 24 (b) A reference to the specific plan provisions on which the determination is based;

1 (c) A statement that the covered person is entitled to receive, upon request and
2 free of charge, reasonable access to, and copies of, all documents, records, and
3 other information relevant, as the term, relevant, is defined in section 35 of this
4 Act, to the covered person's benefit request;

5 (d) If the health carrier relied upon an internal rule, guideline, protocol, or other
6 similar criterion to make the adverse determination, either the specific rule,
7 guideline, protocol, or other similar criterion or a statement that a specific rule,
8 guideline, protocol, or other similar criterion was relied upon to make the
9 adverse determination and that a copy of the rule, guideline, protocol, or other
10 similar criterion will be provided free of charge to the covered person upon
11 request;

12 (e) If the adverse determination is based on a medical necessity or experimental or
13 investigational treatment or similar exclusion or limit, either an explanation of
14 the scientific or clinical judgment for making the determination, applying the
15 terms of the health benefit plan to the covered person's medical circumstances
16 or a statement that an explanation will be provided to the covered person free
17 of charge upon request; and

18 (f) If applicable, instructions for requesting:

19 (i) A copy of the rule, guideline, protocol, or other similar criterion relied
20 upon in making the adverse determination, as provided in subsection (d)
21 of this section; or

22 (ii) The written statement of the scientific or clinical rationale for the
23 determination, as provided in subsection (e) of this section;

24 (6) If applicable, a statement indicating:

- 1 (a) A description of the process to obtain an additional voluntary review of the
2 first level review decision involving an adverse determination, if the covered
3 person wishes to request a voluntary second level review pursuant to section
4 36 of this Act;
- 5 (b) The written procedures governing the voluntary review, including any required
6 time frame for the review; and
- 7 (c) The covered person's right to bring a civil action in a court of competent
8 jurisdiction;
- 9 (7) If applicable, the following statement: "You and your plan may have other voluntary
10 alternative dispute resolution options, such as mediation. One way to find out what
11 may be available is to contact your state insurance director."; and
- 12 (8) Notice of the covered person's right to contact the Division of Insurance for
13 assistance at any time, including the telephone number and address of the Division of
14 Insurance.

15 Section 38. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
16 as follows:

17 A health carrier shall establish written procedures for a standard review of a grievance that
18 does not involve an adverse determination. The procedures shall permit a covered person or the
19 covered person's authorized representative to file a grievance that does not involve an adverse
20 determination with the health carrier under sections 39 to 42, inclusive, of this Act.

21 Section 39. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
22 as follows:

23 No covered person has the right to attend, or to have a representative in attendance at the
24 standard review, but the covered person or the covered person's authorized representative is

entitled to submit written material for the person or persons designated by the carrier pursuant to section 40 of this Act to consider when conducting the review. The health carrier shall make the provisions of this section known to the covered person or, if applicable, the covered person's authorized representative within three working days after the date of receiving the grievance.

Section 40. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt of the grievance, a health carrier shall designate a person or persons to conduct the standard review of the grievance. The health carrier may not designate the same person or persons to conduct the standard review of the grievance that denied the claim or handled the matter that is the subject of the grievance. The health carrier shall provide the covered person or, if applicable, the covered person's authorized representative with the name, address, and telephone number of a person designated to coordinate the standard review on behalf of the health carrier.

Section 41. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

The health carrier shall notify in writing the covered person or, if applicable, the covered person's authorized representative of the decision within twenty working days after the date of receipt of the request for a standard review of a grievance filed pursuant to section 39 of this Act. The time frame for notification may be varied subject to the following:

- (1) Subject to subdivision (2) of this section, if, due to circumstances beyond the carrier's control, the health carrier cannot make a decision and notifies the covered person or, if applicable, the covered person's authorized representative pursuant to this section within twenty working days, the health carrier may take up to an additional ten working days to issue a written decision; and

(2) A health carrier may extend the time for making and notifying the covered person or, if applicable, the covered person's authorized representative in accordance with subdivision (1) of this section, if, on or before the twentieth working day after the date of receiving the request for a standard review of a grievance, the health carrier provides written notice to the covered person or, if applicable, the covered person's authorized representative of the extension and the reasons for the delay.

Section 42. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

The written decision issued pursuant to section 41 of this Act shall contain:

- (1) The titles and qualifying credentials of the person or persons participating in the standard review process (the reviewers);
- (2) A statement of the reviewers' understanding of the covered person's grievance;
- (3) The reviewers' decision in clear terms and the contract basis in sufficient detail for the covered person to respond further to the health carrier's position;
- (4) A reference to the evidence or documentation used as the basis for the decision;
- (5) If applicable, a statement indicating:
 - (a) A description of the process to obtain an additional review of the standard review decision if the covered person wishes to request a voluntary second level review pursuant to section 36 of this Act; and
 - (b) The written procedures governing the voluntary review, including any required time frame for the review; and
- (6) Notice of the covered person's right, at any time, to contact the Division of Insurance, including the telephone number and address of the Division of Insurance.

Section 43. That chapter 58-17C be amended by adding thereto a NEW SECTION to read

as follows:

A health carrier that offers managed care plans shall establish a voluntary review process for its managed care plans to give those covered persons who are dissatisfied with the first level review decision made pursuant to sections 34 to 37, inclusive, of this Act, or who are dissatisfied with the standard review decision made pursuant to sections 38 to 42, inclusive, of this Act, the option to request an additional voluntary review, at which the covered person or the covered person's authorized representative has the right to appear in person at the review meeting before designated representatives of the health carrier. This section does not apply to health indemnity plans.

A health carrier required by this section to establish a voluntary review process shall provide covered persons or their authorized representatives with notice pursuant to subdivision (6) of section 37 of this Act or subdivision (5) of section 42 of this Act, as appropriate, of the option to file a request with the health carrier for an additional voluntary review of the first level review decision received under sections 34 to 37, inclusive, of this Act, or the standard review decision received under sections 38 to 42, inclusive, of this Act.

Section 44. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt of a request for an additional voluntary review, the health carrier shall send notice to the covered person or, if applicable, the covered person's authorized representative of the covered person's right to:

(1) Request the opportunity to appear in person before a review panel of the health carrier's designated representatives within five working days after the date of receipt of the notice;

(2) Receive from the health carrier, upon request, copies of all documents, records, and

1 other information that is not confidential or privileged relevant to the covered person's
2 request for benefits;

3 (3) Present the covered person's case to the review panel;

4 (4) Submit written comments, documents, records, and other material relating to the
5 request for benefits for the review panel to consider when conducting the review both
6 before and, if applicable, at the review meeting;

7 (5) If applicable, ask questions of any representative of the health carrier on the review
8 panel; and

9 (6) Be assisted or represented by an individual of the covered person's choice.

10 The covered person's right to a fair review may not be made conditional on the covered
11 person's appearance at the review.

12 Section 45. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
13 as follows:

14 With respect to a voluntary review of a first level review decision made pursuant to sections
15 34 to 37, inclusive, of this Act, a health carrier shall appoint a review panel to review the request.
16 In conducting the review, the review panel shall take into consideration all comments,
17 documents, records, and other information regarding the request for benefits submitted by the
18 covered person or the covered person's authorized representative pursuant to section 44 of this
19 Act, without regard to whether the information was submitted or considered in reaching the first
20 level review decision. The decision of the panel is legally binding on the health carrier.

21 Except for an individual who was involved with the first level review decision who may be
22 a member of the panel or appear before the panel to present information or answer questions,
23 a majority of the panel shall be comprised of individuals who were not involved in the in the first
24 level review decision made pursuant to sections 34 to 37, inclusive, of this Act.

1 The health carrier shall ensure that a majority of the individuals conducting the additional
2 voluntary review of the first level review decision made pursuant to sections 34 to 37, inclusive,
3 of this Act, are health care professionals who have appropriate expertise. If a reviewing health
4 care professional without the expertise required by this section is not reasonably available and
5 there has been a denial of a health care service, the reviewing health care professional may not:

6 (1) Be a provider in the covered person's health benefit plan; and

7 (2) Have a financial interest in the outcome of the review.

8 Section 46. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
9 as follows:

10 With respect to a voluntary review of a standard review decision made pursuant to sections
11 38 to 42, inclusive, of this Act, a health carrier shall appoint a review panel to review the request.
12 The decision of the panel is legally binding on the health carrier.

13 An employee or representative of the health carrier who was involved with the standard
14 review decision may be a member of the panel or appear before the panel to present information
15 or answer questions. A majority of the panel shall be comprised of employees or representatives
16 of the health carrier who were not involved in the standard review decision made pursuant to
17 sections 38 to 42, inclusive, of this Act.

18 Section 47. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 If a covered person or the covered person's authorized representative requests the
21 opportunity to appear in person before the review panel appointed pursuant to sections 45 and
22 46 of this Act, the procedures for conducting the review shall include the following provisions:

23 (1) The review panel shall schedule and hold a review meeting within forty-five working
24 days after the date of receipt of the request;

1 (2) The covered person or, if applicable, the covered person's authorized representative
2 shall be notified in writing at least fifteen working days in advance of the date of the
3 review meeting;

4 (3) The health carrier shall not unreasonably deny a request for postponement of the
5 review made by the covered person or the covered person's authorized representative;
6 and

7 (4) The review meeting shall be held during regular business hours at a location
8 reasonably accessible to the covered person or, if applicable, the covered person's
9 authorized representative.

10 In any case in which a face-to-face meeting is not practical for geographic reasons, a health
11 carrier shall offer the covered person or, if applicable, the covered person's authorized
12 representative the opportunity to communicate with the review panel, at the health carrier's
13 expense, by conference call, video conferencing, or other appropriate technology.

14 If the health carrier desires to have an attorney present to represent the interests of the health
15 carrier, the health carrier shall notify the covered person or, if applicable, the covered person's
16 authorized representative at least fifteen working days in advance of the date of the review
17 meeting that an attorney will be present and that the covered person may wish to obtain legal
18 representation of his or her own.

19 The review panel shall issue a written decision, as provided in section 49 of this Act, to the
20 covered person or, if applicable, the covered person's authorized representative within five
21 working days of completing the review meeting.

22 Section 48. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
23 as follows:

24 If the covered person or, if applicable, the covered person's authorized representative does

1 not request the opportunity to appear in person before the review panel within the specified
2 timeframe provided under subdivision (1) of section 44 of this Act, the review panel shall issue
3 a decision and notify the covered person or, if applicable, the covered person's authorized
4 representative of the decision, as provided in section 49 of this Act, in writing or electronically,
5 within forty-five working days after the earlier of:

6 (1) The date the covered person or the covered person's authorized representative notifies
7 the health carrier of the covered person's decision not to request the opportunity to
8 appear in person before the review panel; or

9 (2) The date on which the covered person's or the covered person's authorized
10 representative's opportunity to request to appear in person before the review panel
11 expires pursuant to subdivision (1) of section 44 of this Act.

12 For purposes of calculating the time periods within which a decision is required to be made
13 and notice provided under this section and section 47 of this Act and this section, the time period
14 shall begin on the date the request for additional voluntary review is filed with the health carrier
15 in accordance with the health carrier's procedures established pursuant to section 33 of this Act
16 for filing a request without regard to whether all of the information necessary to make the
17 determination accompanies the filing.

18 Section 49. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 A decision issued pursuant to sections 47 and 48 of this Act shall include:

- 21 (1) The titles and qualifying credentials of the members of the review panel;
- 22 (2) A statement of the review panel's understanding of the nature of the grievance and all
23 pertinent facts;
- 24 (3) The rationale for the review panel's decision;

- 1 (4) A reference to evidence or documentation considered by the review panel in making
2 that decision;
- 3 (5) In cases concerning a grievance involving an adverse determination, the instructions
4 for requesting a written statement of the clinical rationale, including the clinical review
5 criteria used to make the determination; and
- 6 (6) Notice of the covered person's right to contact the Division of Insurance for
7 assistance at any time, including the telephone number and address of the Division of
8 Insurance.

9 Section 50. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
10 as follows:

11 A health carrier shall establish written procedures for the expedited review of urgent care
12 requests of grievances involving an adverse determination. In addition, a health carrier shall
13 provide expedited review of a grievance involving an adverse determination with respect to
14 concurrent review urgent care requests involving an admission, availability of care, continued
15 stay, or health care service for a covered person who has received emergency services, but has
16 not been discharged from a facility. The procedures shall allow a covered person or the covered
17 person's authorized representative to request an expedited review under this section orally or in
18 writing.

19 A health carrier shall appoint an appropriate clinical peer or peers in the same or similar
20 specialty as would typically manage the case being reviewed to review the adverse determination.
21 The clinical peer or peers may not have been involved in making the initial adverse determination.

22 Section 51. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
23 as follows:

24 In an expedited review, all necessary information, including the health carrier's decision, shall

1 be transmitted between the health carrier and the covered person or, if applicable, the covered
2 person's authorized representative by telephone, facsimile, or the most expeditious method
3 available.

4 Section 52. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
5 as follows:

6 An expedited review decision shall be made and the covered person or, if applicable, the
7 covered person's authorized representative shall be notified of the decision in accordance with
8 section 53 of this Act as expeditiously as the covered person's medical condition requires, but
9 in no event more than seventy-two hours after the date of receipt of the request for the expedited
10 review. If the expedited review is of a grievance involving an adverse determination with respect
11 to a concurrent review urgent care request, the service shall be continued without liability to the
12 covered person until the covered person has been notified of the determination.

13 For purposes of calculating the time periods within which a decision is required to be made
14 under this section, the time period within which the decision is required to be made shall begin
15 on the date the request is filed with the health carrier in accordance with the health carrier's
16 procedures established pursuant to section 33 of this Act for filing a request without regard to
17 whether all of the information necessary to make the determination accompanies the filing.

18 Section 53. That chapter 58-17C be amended by adding thereto a NEW SECTION to read
19 as follows:

20 A notification of a decision under sections 50 to 53, inclusive, of this Act shall, in a manner
21 calculated to be understood by the covered person or, if applicable, the covered person's
22 authorized representative, set forth the following:

- 23 (1) The titles and qualifying credentials of the person or persons participating in the
24 expedited review process (the reviewers);

1 (2) A statement of the reviewers' understanding of the covered person's grievance;

2 (3) The reviewers' decision in clear terms and the contract basis or medical rationale in
3 sufficient detail for the covered person to respond further to the health carrier's
4 position;

5 (4) A reference to the evidence or documentation used as the basis for the decision;

6 (5) If the decision involves an adverse determination, the notice shall provide:

7 (a) The reasons for the adverse determination;

8 (b) A reference to the specific plan provisions on which the determination is based;

9 (c) A description of any additional material or information necessary for the
10 covered person to complete the request, including an explanation of why the
11 material or information is necessary to complete the request;

12 (d) If the health carrier relied upon an internal rule, guideline, protocol, or other
13 similar criterion to make the adverse determination, either the specific rule,
14 guideline, protocol, or other similar criterion or a statement that a specific rule,
15 guideline, protocol, or other similar criterion was relied upon to make the
16 adverse determination and that a copy of the rule, guideline, protocol, or other
17 similar criterion will be provided free of charge to the covered person upon
18 request;

19 (e) If the adverse determination is based on a medical necessity or experimental or
20 investigational treatment or similar exclusion or limit, either an explanation of
21 the scientific or clinical judgment for making the determination, applying the
22 terms of the health benefit plan to the covered person's medical circumstances
23 or a statement that an explanation will be provided to the covered person free
24 of charge upon request;

(f) If applicable, instructions for requesting:

(i) A copy of the rule, guideline, protocol, or other similar criterion relied upon in making the adverse determination as provided in subsection (d) of this section; or

(ii) The written statement of the scientific or clinical rationale for the adverse determination as provided in subsection (e) of this section;

(g) A statement indicating the covered person's right to bring a civil action in a court of competent jurisdiction; and

(h) The following statement: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your state insurance director."; and

(i) A notice of the covered person's right to contact the Division of Insurance for assistance at any time, including the telephone number and address of the Division of Insurance.

A health carrier may provide the notice required under this section orally, in writing, or electronically. If notice of the adverse determination is provided orally, the health carrier shall provide written or electronic notice of the adverse determination within three days following the date of the oral notification.

Section 54. The director may promulgate rules, pursuant to chapter 1-26, pertaining to claims for group disability income plans. The rules shall be consistent with applicable federal requirements included in 29 CFR Part 2560.

Section 55. That chapter 58-17C be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, urgent care request, means a request for a health

1 care service or course of treatment with respect to which the time periods for making a
2 nonurgent care request determination:

3 (1) Could seriously jeopardize the life or health of the covered person or the ability of the
4 covered person to regain maximum function; or

5 (2) In the opinion of a physician with knowledge of the covered person's medical
6 condition, would subject the covered person to severe pain that cannot be adequately
7 managed without the health care service or treatment that is the subject of the request.

8 Except as provided in subdivision (1), in determining whether a request is to be treated as
9 an urgent care request, an individual acting on behalf of the health carrier shall apply the
10 judgment of a prudent layperson who possesses an average knowledge of health and medicine.

11 Any request that a physician with knowledge of the covered person's medical condition
12 determines is an urgent care request within the meaning of subdivisions (1) and (2) shall be
13 treated as an urgent care request.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

265I0395

SENATE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1122 -**

02/25/2003

Introduced by: Representatives Konold and Sebert and Senator McCracken

1 FOR AN ACT ENTITLED, An Act to provide certain hunting and fishing privileges to persons

2 on active duty in the armed forces.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 41-6 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any resident who is on active duty in the armed forces of the United States and who is
7 stationed at a location outside the state may fish and hunt small game without payment of a fee
8 or the applicable hunting and fishing license authorizing the activity. However, if the resident is
9 hunting migratory birds, the resident shall obtain a migratory bird certification permit and federal
10 migratory bird stamp. While engaged in the permitted activity, the resident shall have in
11 possession and display appropriate military orders indicating the resident is on active duty
12 stationed outside of South Dakota and a valid South Dakota driver's license or South Dakota
13 identification card. This Act does not apply to any person who is serving on active duty for
14 training as a member of the armed forces reserve or national guard.



State of South Dakota

SEVENTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2003

806I0608

SENATE ENGROSSED NO. **HB 1215** - 02/27/2003

Introduced by: Representatives Hundstad, Bradford, Elliott, Frost, Novstrup, and Sigdestad
and Senators Dennert, Sutton (Duane), and Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the records kept by
2 taxidermists and the inspection of taxidermists.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 41-6-33 be amended to read as follows:

5 41-6-33. It is a Class 2 misdemeanor for a person to preserve or mount birds, animals, or fish
6 that ~~do not belong to himself~~ such person does not own without a taxidermist's license or in
7 violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

8 A taxidermist's license permits the licensee to have in ~~his~~ possession at ~~his~~ the taxidermist's
9 place of business, birds, animals, or fish, lawfully caught, taken, or killed, for the sole purpose
10 of preserving or mounting ~~the same~~ them. Birds, animals, or fish or any part thereof may be
11 transported by anyone having them legally in possession to a licensee for preserving or mounting
12 only and for return by the licensee to the owner thereof.

13 ~~A taxidermist's license must be approved by the~~ The Game, Fish and Parks Commission shall
14 approve each taxidermist's license. The commission shall promulgate rules pursuant to chapter
15 1-26 setting the requirements for a taxidermist's license. Each licensee shall keep a written record



1 of all birds, animals, and fish received by ~~him~~ the licensee. The record shall include the name and
2 address of each specimen's owner, the number and species, and the dates of receipt and delivery
3 of each specimen. ~~The books, offices, or buildings in which records and specimens are kept shall~~
4 ~~at all times~~ record and customers' specimens shall be open made available for inspection by any
5 representative of the Department of Game, Fish and Parks during normal business hours.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0520

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 63** - 01/31/2003

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to repeal the sales tax exemption for certain interstate
2 telecommunication services and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-6.1 be amended to read as follows:

5 10-45-6.1. Except as provided in § 10-45-6.2, there is hereby imposed ~~on amounts paid for~~
6 ~~local telephone services, toll telephone services, and teletypewriter services,~~ a tax of four percent
7 ~~of the amount so paid. The taxes imposed by this section shall be paid by the person paying for~~
8 ~~the services. If a bill is rendered the taxpayer for local telephone service or toll telephone service,~~
9 ~~the amount on which the tax with respect to such services shall be based shall be the sum of all~~
10 ~~charges for such services included in the bill; except that if a person who renders the bill groups~~
11 ~~individual items for purposes of rendering the bill and computing the tax, then the amount on~~
12 ~~which the tax for each such group shall be based shall be the sum of all items within that group,~~
13 ~~and the tax on the remaining items not included in any such group shall be based on the charge~~
14 ~~for each item separately. If the tax imposed by this section with respect to toll telephone service~~
15 ~~is paid by inserting coins in coin operated telephones, the tax shall be computed to the nearest~~



~~multiple of five cents, except that, where the tax is midway between multiples of five cents, the next higher multiple shall apply. The tax so paid shall be remitted at the same time as the sales tax imposed by this chapter upon the gross receipts from providing any telecommunication service that originates or terminates in this state and that is billed or charged to a service address in this state, or that both originates and terminates in this state. However, the tax imposed by this section does not apply to:~~

(1) Any eight hundred or eight hundred type service unless the service both originates and terminates in this state; or

(2) Any sale of a telecommunication service to a provider of telecommunication services, including access service, for use in providing any telecommunication service.

For the purposes of this section, the term, telecommunication service, is the transmission of signs, signals, writings, images, sounds, messages, data, or other information of any nature by wire, radio, lightwaves, electromagnetic means.

Section 2. That § 10-45-12.1 be amended to read as follows:

10-45-12.1. The following services enumerated in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and Budget, Office of the President are exempt from the provisions of this chapter: health services (major group 80); educational services (major group 82) except schools and educational services not elsewhere classified (industry no. 8299); social services (major group 83); agricultural services (major group 07) except veterinarian services (group no. 074) and animal specialty services, except veterinary (industry no. 0752); forestry services (group no. 085); radio and television broadcasting (group no. 483); railroad transportation (major group 40); local and suburban passenger transportation (group no. 411) except limousine services; school buses (group no. 415); farm product warehousing and storage (industry no. 4221); establishments

1 primarily engaged in transportation on rivers and canals (group no. 444); establishments primarily
2 engaged in air transportation, certified carriers (group no. 451); establishments primarily engaged
3 in air transportation, noncertified carriers (group no. 452) except chartered flights (industry no.
4 4522) and airplane, helicopter, balloon, dirigible, and blimp rides for amusement or sightseeing;
5 pipe lines, except natural gas (major group 46); arrangement of passenger transportation (group
6 no. 472); arrangement of transportation of freight and cargo (group no. 473); rental of railroad
7 cars (group no. 474); water supply (industry no. 4941); sewerage systems (industry no. 4952);
8 security brokers, dealers and flotation companies (group no. 621); commodity contracts brokers
9 and dealers (group no. 622); credit counseling services provided by individual and family social
10 services (industry no. 8322); construction services (division C) except industry no. 1752 and
11 locksmiths and locksmith shops; consumer credit reporting agencies, mercantile reporting
12 agencies, and adjustment and collection agencies (group no. 732), if the debt was incurred
13 out-of-state and the client does not reside within the state. The following are also specifically
14 exempt from the provisions of this chapter: financial services of institutions subject to tax under
15 chapter 10-43 including loan origination fees, late payment charges, nonsufficient fund check
16 charges, stop payment charges, safe deposit box rent, exchange charges, commission on travelers
17 checks, charges for administration of trusts, interest charges, and points charged on loans;
18 commissions earned or service fees paid by an insurance company to an agent or representative
19 for the sale of a policy; services of brokers and agents licensed under Title 47; the sale of trading
20 stamps; rentals of motor vehicles as defined by § 32-5-1 leased under a single contract for more
21 than twenty-eight days; advertising services; services provided by any corporation to another
22 corporation which is centrally assessed having identical ownership and services provided by any
23 corporation to a wholly owned subsidiary which is centrally assessed; continuing education
24 programs; tutoring; vocational counseling, except rehabilitation counseling; and motion picture

1 rentals to a commercially operated theater primarily engaged in the exhibition of motion pictures;
2 ~~and charges made by a telecommunications company for the origination, transmission, switching,~~
3 ~~reception, or termination of an interstate telephone or telegraph communication.~~

4 Section 3. That § 10-45-6.2 be amended to read as follows:

5 10-45-6.2. There is hereby imposed a tax of four percent upon the gross receipts of mobile
6 telecommunications services, as defined in 4 U.S.C. § 124(7) as of January 1, 2002, that
7 originate and terminate in the same state and are billed to a customer with a place of primary use
8 in this state or are deemed to have originated or been received in this state and to be billed or
9 charged to a service address in this state if the customer's place of primary use is located in this
10 state regardless of where the service actually originates or terminates. Notwithstanding any other
11 provision of this chapter and for purposes of the tax imposed by this section, the tax imposed
12 upon mobile telecommunication services shall be administered in accordance with 4 U.S.C.
13 §§ 116-126 as in effect on July 28, 2000.

14 Section 4. Whereas, this Act is necessary for the support of the state government and its
15 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
16 force and effect from and after April 1, 2003.

State of South Dakota

SEVENTY-EIGHTH SESSION LEGISLATIVE ASSEMBLY, 2003

488I0153

HOUSE EDUCATION COMMITTEE ENGROSSED NO. **SB 71** - 02/27/2003

Introduced by: Senators Olson (Ed), Dempster, Knudson, Koetzle, McCracken, Moore, Reedy, Sutton (Dan), and Symens and Representatives Schafer, Burg, Craddock, Elliott, Haverly, Kroger, LaRue, and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to provide for the alternative certification of school
2 administrators.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Board of Education shall promulgate rules pursuant to chapter 1-26
5 establishing an alternative route to certification for persons employed as school administrators
6 who do not currently meet the certification requirements for the positions they hold. The
7 alternative certification program shall be delivered by an accredited college or university with an
8 approved program or endorsement program in the discipline. It shall be delivered in coordination
9 with the Department of Education and Cultural Affairs and the employing school system. The
10 alternative certification program shall include education coursework in administration, on-the-job
11 training, and mentorship.

12 Section 2. Effective July 1, 2005, all school administrators whose preparation does not met
13 certification standards established in ARSD 24:16:09 shall submit to the Department of
14 Education and Cultural Affairs a professional development plan to meet the alternative



- 1 certification requirements established by the South Dakota Board of Education.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

626I0622

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 116** - 02/19/2003

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators McCracken and Knudson and Representatives Peterson (Bill) and Wick

1 FOR AN ACT ENTITLED, An Act to provide certain provisions regarding the tax on certain
2 telecommunication services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 In the case of a bundled transaction of telecommunications services, if the charges are
7 attributable to services that are taxable and services that are nontaxable, the portion of the price
8 attributable to the nontaxable services shall be subject to tax unless the provider can reasonably
9 identify such portion from its books and records kept in the regular course of business for other
10 purposes.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

508I0503

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 121 - 02/06/2003

Introduced by: Senators de Hueck, Abdallah, Apa, Duenwald, Duniphan, Olson (Ed), Sutton (Dan), and Sutton (Duane) and Representatives Frost, Garnos, Juhnke, Konold, Lintz, McCaulley, Murschel, Nesselhuf, O'Brien, Sigdestad, and Teupel

1 FOR AN ACT ENTITLED, An Act to revise certain penalties for violations relating to alcoholic
2 beverage licenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 35-2-10 be amended to read as follows:

5 35-2-10. Any ~~license issued~~ licensee under this title may, ~~in compliance with chapter 1-26,~~
6 ~~be revoked or suspended by the secretary~~ be ordered to pay a fine not to exceed five hundred
7 dollars upon proof of a first violation within two years by the licensee, ~~his agents or employees,~~
8 or any agent or employee of the licensee, or by the manager or contractual operators operator
9 of a retail establishments and their agents or employees establishment, or any agent or employee
10 of the retail establishment operating under a county or municipal license, of any provision of this
11 title, ~~or any rule or regulation adopted by the secretary as provided in this title, or violation of~~
12 any ordinance or regulation of the political subdivision issuing the license relevant of alcoholic
13 beverage control. Upon proof of a second violation within two years, the licensee may be
14 ordered to pay a fine not to exceed one thousand dollars. Upon proof of a third violation within



two years, the licensee's license may, in compliance with chapter 1-26, be revoked or suspended.

For licensees with multiple alcoholic beverage licenses for the same premises, upon suspension or revocation of any license pursuant to this chapter, such licensee shall cease operation under all alcoholic beverage licenses held by such licensee for the same premises for the same period as the suspension or revocation.

Section 2. That chapter 35-2 be amended by adding thereto a NEW SECTION to read as follows:

Any retail licensee shall have present on the premises during regular operating hours at least one employee or agent that has been certified by a nationally recognized training program approved by the Department of Revenue that provides instruction on techniques to prevent persons under the age of twenty-one years from purchasing or consuming alcoholic beverages.

Section 3. That § 35-2-10.1 be repealed.

~~35-2-10.1. No retail license may be revoked or suspended because of a violation of any statute, ordinance, rule, or regulation prohibiting the sale or service of any alcoholic beverage to a person under the age of twenty-one years if the violation was committed by an employee or agent of the licensee and:~~

~~(1) The licensee did not see the violation occur;~~

~~(2) The employee or agent has been certified by a nationally recognized training program approved by the Department of Revenue that provides instruction on techniques to prevent persons under the age of twenty-one years from purchasing or consuming alcoholic beverages;~~

~~(3) The licensee has a written policy requiring the licensee's employees or agents to examine the driver's license or other age-bearing identification document of any person who appears to be under the age of twenty-one years before selling or serving~~

1 ~~any alcoholic beverage to that person, and the employee or agent has agreed in~~
2 ~~writing to abide by the policy;~~

3 ~~— (4) — The employee or agent has not been convicted of a similar violation within the past~~
4 ~~twelve months; and~~

5 ~~— (5) — The licensee has not had any prior violation of any statute, ordinance, rule, or~~
6 ~~regulation prohibiting the sale or service of an alcoholic beverage to a person under~~
7 ~~the age of twenty-one years on the premise where the violation occurred in the~~
8 ~~previous twelve months.~~

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

633I0625

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 123** - 02/27/2003

Introduced by: Senators Koskan, Apa, Dennert, Duniphan, LaPointe, and Olson (Ed) and
Representatives Juhnke and McCaulley

1 FOR AN ACT ENTITLED, An Act to revise the definition of residence for registration
2 purposes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 12-1-4 be amended to read as follows:

5 12-1-4. For the purposes of this title, "~~residence~~" ~~shall be~~ the term, residence, means the
6 place in which a person has fixed his or her habitation and to which, ~~whenever he is absent, he~~
7 ~~has the intention of returning~~ the person, whenever absent, intends to return.

8 A person who has left ~~his~~ home and gone into another state or territory or county of this
9 state for a temporary purpose only ~~shall not be considered to have lost his~~ has not changed his
10 or her residence.

11 A person ~~shall be~~ is considered to have gained a residence in any county or municipality of
12 this state in which ~~he~~ the person actually lives, ~~providing such~~ if the person has no present
13 intention ~~to remove himself therefrom~~ of leaving and has actually resided in South Dakota for
14 at least thirty consecutive days.

15 If a person moves to another state, or to any of the other territories, with the intention of



- 1 making it his or her permanent home, ~~he shall be considered to have lost his the person thereby~~
- 2 loses residence in this state.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0585

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 129** - 02/05/2003

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to increase certain fees charged by the Office of the
2 Secretary of State.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-8-10 be amended to read as follows:

5 1-8-10. The secretary of state shall charge the following fees for services performed in the
6 Office of the Secretary of State and shall collect the fees in advance:

7 (1) For filing, recording, and safekeeping of any instrument or paper required by law to
8 be filed and recorded in the office, one dollar per page;

9 (2) For making a copy or transcript of any record, instrument, or paper, except campaign
10 finance reports, on file in the office, one dollar per page;

11 (3) For filing and safekeeping of any instrument or paper required by law to be filed only,
12 one dollar; except the oath of office of members of the Legislature and legislative
13 officers, employees and governmental officers, employees and agencies, for which
14 there is no fee;

15 (4) For each commission, requisition, passport, or other document, signed by the



1 Governor and attested by the secretary of state, under the great seal of the state,
2 except commissions issued for executive appointment and extraditions, and making
3 the proper record for the same, five dollars;

4 (5) For filing application, bond, and issuing commission of notary public, ~~ten~~ twenty-five
5 dollars;

6 (6) For official certificate, attestation, and impression of the great seal, ~~two~~ five dollars;

7 (7) For filing or recording any other instrument or document, one dollar; and

8 (8) For a certified copy of any document, instrument, or paper on file in the office, one
9 dollar per page and ~~five~~ ten dollars for the certificate and affixing the seal;

10 ~~—(9)—~~ ~~For making a copy of any campaign finance report, thirty cents per page for the first~~
11 ~~ten pages and ten cents per page for each page thereafter.~~

12 However, there is no fee to any state government agency pursuant to ~~subdivisions (1), (2),~~
13 ~~and (9)~~ subdivision (1) or (2).

14 Section 2. That § 1-8-12 be amended to read as follows:

15 1-8-12. The secretary of state shall charge a fee of ~~ten~~ twenty dollars for expedited services.

16 Section 3. That § 2-12-3 be amended to read as follows:

17 2-12-3. Each lobbyist who registers and is employed pursuant to this chapter shall pay to the
18 secretary of state an annual registration fee of ~~twenty-five~~ thirty-five dollars for each employer
19 represented by ~~him~~ the lobbyist. Upon payment, ~~his~~ the lobbyist's name shall be registered by the
20 secretary of state in the directory provided by § 2-12-2, and ~~he~~ the lobbyist is entitled to one
21 copy of the official directory of the current year's legislative session. A fee of ten dollars may be
22 charged for a weekly copy of an updated directory of lobbyists. All fees collected shall be
23 deposited by the secretary of state with the state treasurer and credited to the general fund.

24 Any lobbyist who registers pursuant to this section is exempt from the one dollar filing fee

1 prescribed in subdivision 1-8-10(3).

2 Section 4. That § 15-7-7 be amended to read as follows:

3 15-7-7. Service of process as authorized by § 15-7-6 shall be made by serving a copy thereof
4 upon the secretary of state, or by filing ~~such the~~ copy in the office of ~~said the~~ secretary of state,
5 together with payment of a fee of ~~two ten~~ dollars, ~~and such~~. The service shall be sufficient service
6 upon the absent resident or the nonresident or ~~his the~~ resident's or nonresident's personal
7 representative; ~~provided that if the~~ notice of ~~such the~~ service and a copy of the process are within
8 ten days thereafter sent by mail by the plaintiff to the defendant at ~~his the~~ defendant's last-known
9 address and that the plaintiff's affidavit of compliance with the provisions of this section is
10 attached to the summons. The secretary of state shall keep a record of ~~all such any~~ process so
11 served ~~which~~. The record shall show the day and hour of such service. The fee of ~~two ten~~ dollars
12 paid by the plaintiff to the secretary of state at the time of service of ~~such the~~ process shall be
13 ~~taxed in his cost~~ recovered as taxable costs if ~~he the~~ plaintiff prevails in the suit.

14 Section 5. That § 15-7-14 be amended to read as follows:

15 15-7-14. ~~Such~~ The service of process as authorized by § 15-7-13 shall be made by filing in
16 the Office of the Secretary of State a copy of ~~such the~~ process and payment to ~~such the~~ secretary
17 of state a fee of ~~two ten~~ dollars and shall be completed by the plaintiff, ~~his or the~~ plaintiff's agent
18 or attorney within ten days after ~~such the~~ filing, forwarding to the defendant, or ~~his the~~
19 defendant's personal representative, by registered or certified mail at the defendant's last known
20 post office address, or the last known post office address of defendant's personal representative,
21 notice of such service and a copy of the process. In lieu of such mailing ~~such the~~ process may
22 be served upon the defendant or ~~his the~~ defendant's personal representative personally without
23 the state at any time within thirty days after ~~such the~~ filing of ~~such the~~ process. The time within
24 which the defendant or ~~his the~~ defendant's personal representative may appear ~~shall~~ does not

1 commence to run until ~~such~~ the mailing or ~~such~~ the personal service without the state. The
2 secretary of state shall keep a record of ~~all such~~ any process so served, ~~such~~ the record to show
3 the day and hour of ~~such~~ the service. The fee of ~~two~~ ten dollars paid by the plaintiff to ~~such~~ the
4 secretary of state shall be ~~taxed in his costs~~ recovered as taxable costs if ~~he~~ the plaintiff prevails.

5 Section 6. That § 18-1-1 be amended to read as follows:

6 18-1-1. The secretary of state shall appoint ~~one or more~~ notaries public, who shall hold office
7 for six years unless sooner removed by the secretary of state. An applicant to become a notary
8 public shall complete an application form as prescribed by the secretary of state pursuant to
9 chapter 1-26. The applicant shall submit a fee of ~~ten~~ twenty-five dollars. The application shall
10 include the applicant's name, street, city, state, zip code, county, and date of birth. The applicant
11 shall apply in the same name as that which will appear as the seal imprint. Each notary may,
12 anywhere in this state, administer oaths and perform all other duties required by law. The
13 secretary of state may not appoint as a notary public any person who has been convicted of a
14 felony.

15 Section 7. That § 37-6-5 be amended to read as follows:

16 37-6-5. Subject to the limitations set forth in §§ 37-6-6 to 37-6-11, inclusive, any person who
17 adopts and uses a mark in this state may file in the Office of the Secretary of State, on a form to
18 be furnished by the secretary of state, an application for registration of that mark setting forth
19 the following information:

- 20 (1) The name and business address of the person applying for the registration; and, if a
21 corporation, the state of incorporation;
- 22 (2) The goods or services in connection with which the mark is used and the mode or
23 manner in which the mark is used in connection with the goods or services and the
24 class in which the goods fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or the applicant's predecessor in business; and

(4) A statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

The application shall be signed under oath by the applicant or by a member of the firm or an officer of the corporation or association applying. The application shall be accompanied by a specimen or facsimile of the mark in triplicate. The application for registration shall be accompanied by a filing fee of ~~fifty~~ one hundred dollars, payable to the secretary of state.

Section 8. That § 37-6-14 be amended to read as follows:

37-6-14. Registration of a mark under § 37-6-13 is effective for a term of four years from the date of registration. Upon application filed within six months prior to the expiration of the term, on a form to be furnished by the secretary of state, the registration may be renewed for a like term. A renewal fee of ~~fifty~~ one hundred dollars, payable to the secretary of state, shall accompany the application for renewal of the registration. A mark registration may be renewed for successive periods of four years in like manner.

Section 9. That § 37-6-17 be amended to read as follows:

37-6-17. A mark and its registration under § 37-6-13 is assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary of state upon the payment of a fee of ~~fifty~~ one hundred dollars payable to the secretary of state ~~who, upon~~. Upon recording of the assignment, the secretary of state shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration

1 under § 37-6-13 is void as against any subsequent purchaser for valuable consideration without
2 notice unless it is recorded with the secretary of state within three months after the date thereof
3 or prior to ~~such~~ the subsequent purchase.

4 Section 10. That § 43-27-1 be amended to read as follows:

5 43-27-1. The owner of any farm, ranch, or home in this state may, upon the payment of ~~one~~
6 ~~dollar~~ ten dollars to the secretary of state, have the name of ~~such~~ the farm, ranch, or home
7 entered and recorded in a register, ~~which the~~ The secretary of state shall keep for such purpose,
8 ~~and thereupon such owner shall be by such officer furnished~~ the register and furnish the owner
9 a certificate setting forth the name and location of the farm, ranch, or home and the name of ~~such~~
10 the owner.

11 Section 11. That § 43-44-6 be amended to read as follows:

12 43-44-6. The fee of the secretary of state for filing the application and issuing certificate of
13 registration, alteration, or cancellation shall be ~~five~~ fifty dollars.

14 The fee for filing any assignment or other transfer of registration shall be ~~one dollar~~ ten
15 dollars.

16 The fee for searches, certified copies, and other official acts of the secretary of state, required
17 under the provisions of this chapter, shall be the same as provided by law for similar services
18 except as otherwise specifically provided in this chapter.

19 Section 12. That § 47-9-7 be amended to read as follows:

20 47-9-7. The secretary of state shall charge and collect for:

21 (1) Filing articles of incorporation and issuing a certificate of incorporation or filing an
22 application of a foreign corporation for a certificate of authority to transact business
23 in this state and issuing the certificate:

1	Authorized capital stock of \$25,000 or less	\$ 90 <u>100</u>
2	Over \$25,000 and not exceeding 100,000	110 <u>125</u>
3	Over \$100,000 and not exceeding 500,000	130 <u>200</u>
4	Over \$500,000 and not exceeding 1,000,000	150 <u>300</u>
5	Over \$1,000,000 and not exceeding 1,500,000	200 <u>400</u>
6	Over \$1,500,000 and not exceeding 2,000,000	250 <u>500</u>
7	Over \$2,000,000 and not exceeding 2,500,000	300 <u>600</u>
8	Over \$2,500,000 and not exceeding 3,000,000	350 <u>700</u>
9	Over \$3,000,000 and not exceeding 3,500,000	400 <u>800</u>
10	Over \$3,500,000 and not exceeding 4,000,000	450 <u>900</u>
11	Over \$4,000,000 and not exceeding 4,500,000	500 <u>1,000</u>
12	Over \$4,500,000 and not exceeding 5,000,000	550 <u>1,100</u>
13	For each additional \$500,000, \$40 <u>\$250</u> in addition to \$550 <u>\$1,100</u> .	

14 For purposes only of computing fees under this section, the dollar value of each
15 authorized share having a par value shall be equal to par value and the value of each
16 authorized share having no par value shall be equal to one hundred dollars per share.

17 The maximum amount charged under this subdivision may not exceed sixteen
18 thousand dollars;

19 (2) Filing articles of amendment and issuing a certificate of amendment, ~~twenty~~ fifty
20 dollars;

21 (3) Filing restated articles of incorporation, ~~twenty~~ fifty dollars;

22 (4) Filing articles of merger or consolidation and issuing a certificate of merger or
23 consolidation, ~~twenty~~ fifty dollars;

24 (5) Filing an application to reserve a corporate name, ~~fifteen~~ twenty dollars;

25 (6) Filing a notice of transfer of a reserved corporate name, ten dollars.

26 (7) Filing a statement of change of address of registered office or change of registered

1 agent, or both, ten dollars;

2 (8) Filing a statement of the establishment of a series of shares, ~~twenty~~ fifty dollars;

3 (9) Filing a statement of cancellation of shares, ~~twenty~~ fifty dollars;

4 (10) Filing a statement of reduction of stated capital, ~~twenty~~ fifty dollars;

5 (11) Filing a statement of revocation of voluntary dissolution proceedings, ten dollars;

6 (12) Filing articles of dissolution, ten dollars;

7 (13) Filing an application of a foreign corporation for an amended certificate of authority
8 to transact business in this state and issuing an amended certificate of authority,
9 ~~twenty~~ fifty dollars;

10 (14) Filing a copy of an amendment to the articles of incorporation of a foreign
11 corporation holding a certificate of authority to transact business in this state, ~~twenty~~
12 fifty dollars;

13 (15) Filing a copy of articles of merger of a foreign corporation holding a certificate of
14 authority to transact business in this state, ~~twenty~~ fifty dollars;

15 (16) Filing an application for withdrawal of a foreign corporation and issuing a certificate
16 of withdrawal, ten dollars;

17 (17) Filing any other statement or report except an annual report, of a domestic or foreign
18 corporation, ten dollars;

19 (18) Filing by a domestic corporation of articles of amendment, restated articles of
20 incorporation, or articles of merger or consolidation in which the surviving
21 corporation is a domestic corporation, which provides authority to increase the
22 number of authorized shares of such corporation, in addition to the other fees
23 imposed by this section, an additional fee shall be charged as shall make, together with
24 the fee paid at the time of the incorporation, a total sum equal to the fee which would

1 be required under this section in case the corporation had been incorporated for such
2 total increased capitalization;

3 (19) Filing by a foreign corporation of articles of amendment or articles of merger when
4 the surviving or new corporation is a foreign corporation, which articles provide
5 authority to increase the number of authorized shares of such foreign corporation, in
6 addition to the other fees imposed by this section, an additional fee shall be charged
7 as shall make, together with the ~~sum that would have been~~ fee paid at the time of
8 authorization based on the fee schedule in subdivision (1) of this section, a total sum
9 equal to the fee which would be required under this section in the case the corporation
10 had been authorized for such total increased capitalization;

11 (20) All articles of amendment or articles of merger if the surviving or new corporation is
12 a foreign corporation shall be filed with the secretary of state within thirty days after
13 they have been filed with the secretary of state or other proper officer of the state
14 wherein the corporation is organized. In case of failure to so file within the time
15 specified in this subdivision, the corporation shall pay to the secretary of state on the
16 filing of such articles of amendment or articles of merger a penalty of twenty-five
17 dollars;

18 (21) Filing an annual report of a domestic or foreign corporation, ~~twenty-five~~ thirty dollars;

19 (22) Each corporation, domestic or foreign, that fails or refuses to file its annual report for
20 any year within the time prescribed by this chapter is subject to a penalty of fifty
21 dollars to be assessed by the secretary of state;

22 (23) Issuing a certificate of existence, ~~ten~~ fifteen dollars;

23 (24) Filing articles of correction, twenty dollars.

24 Section 13. That § 47-9-8 be amended to read as follows:

1 47-9-8. The secretary of state shall charge and collect for furnishing a certified copy of any
2 document, instrument, or paper relating to a corporation, one dollar per page and ~~five~~ ten dollars
3 for the certificate and affixing the seal thereto.

4 Section 14. That § 47-9-9 be amended to read as follows:

5 47-9-9. The secretary of state shall charge and collect, at the time of any service of process
6 on ~~him~~ the secretary of state as resident agent of a corporation, ~~five~~ twenty-five dollars, which
7 amount may be recovered as taxable costs by the party to the suit or action causing ~~such~~ the
8 service to be made if ~~such~~ the party prevails in the suit or action.

9 Section 15. That § 47-20-7 be amended to read as follows:

10 47-20-7. The annual report required by § 47-20-5 shall be delivered to the secretary of state
11 before the first day of the second month following the anniversary month of the corporation, of
12 each year following incorporation. A fee of ~~five~~ thirty dollars shall be paid to the secretary of
13 state for filing the report. If the report does not conform to requirements, it shall be returned to
14 the cooperative for necessary corrections. The penalties for failure to file ~~such~~ the report do not
15 apply if it is corrected and returned within thirty days after receipt thereof.

16 Section 16. That § 47-24-8 be repealed.

17 ~~—47-24-8. The secretary of state may grant to a corporation, upon written request, the right~~
18 ~~to report for any other year and to file such report before the first day of the second month~~
19 ~~following the anniversary month of the corporation.~~

20 Section 17. Section 16 of this Act is effective December 31, 2003. Section 18 of this Act is
21 effective January 1, 2004.

22 Section 18. That § 47-24-9 be amended to read as follows:

23 47-24-9. ~~After the annual report required to be filed on or before July 1, 1981, the reporting~~
24 ~~requirements of §§ 47-24-6 to 47-24-8, inclusive, require filing of reports only once every three~~

1 ~~years as outlined in § 47-24-7. The reporting requirements of §§ 47-24-6 and 47-24-7 require~~
2 filing of reports annually.

3 Section 19. That § 47-28-6 be amended to read as follows:

4 47-28-6. The secretary of state shall charge and collect for:

5 (1) Filing articles of incorporation and issuing a certificate of incorporation, ~~twenty~~
6 twenty-five dollars;:

7 (2) Filing articles of amendment and issuing a certificate of amendment, ten dollars;:

8 (3) Filing articles of merger or consolidation and issuing a certificate of merger or
9 consolidation, ten dollars;:

10 (4) Filing a statement of change of address of registered office or change of registered
11 agent, or both, five dollars;:

12 (5) Filing articles of dissolution, five dollars;:

13 (6) Filing an application of a foreign corporation for a certificate of authority to conduct
14 affairs in this state and issuing a certificate of authority, ~~fifty~~ one hundred dollars;:

15 (7) Filing an application of a foreign corporation for an amended certificate of authority
16 to conduct affairs in this state and issuing an amended certificate of authority, twenty
17 dollars;:

18 (8) Filing an application for withdrawal of a foreign corporation and issuing a certificate
19 of withdrawal, five dollars;:

20 (9) Filing any other statement or report, including an annual report, of a foreign
21 corporation, ten dollars;:

22 (10) Filing an annual report of a domestic nonprofit corporation under chapter 47-24, ten
23 dollars;: and

24 (11) Filing a petition for reinstatement and issuing a certificate of reinstatement, ~~twenty~~

1 twenty-five dollars.

2 Section 20. That § 47-28-7 be amended to read as follows:

3 47-28-7. The secretary of state shall charge and collect, at the time of any service of process
4 on ~~him~~ the secretary of state as resident agent of a corporation, ~~five~~ twenty-five dollars, which
5 amount may be recovered as taxable costs by the party to the suit or action causing ~~such~~ the
6 service to be made if ~~such~~ the party prevails in the suit or action.

7 Section 21. That § 47-28-8 be amended to read as follows:

8 47-28-8. The secretary of state shall charge and collect for furnishing a certified copy of any
9 document, instrument, or paper relating to a corporation, one dollar per page, and ~~five~~ ten
10 dollars for the certificate and affixing the seal thereto.

11 Section 22. That § 47-34-54 be amended to read as follows:

12 47-34-54. The secretary of state shall charge and collect for:

13 (1) Filing the original articles of organization and issuing certificates of organization, in
14 the case of a domestic limited liability company or filing, registering and issuing a
15 certificate of authority in the case of a foreign liability company; if the total agreed
16 contributions of the limited liability company are:

17 ————— Not in excess of \$50,000	\$ 90
18 ————— \$50,001 to \$100,000	\$150
19 ————— In excess of \$100,000	\$150 for first \$100,000, plus \$.50 for each additional \$1,000

20 <u>\$25,000 or less</u>	<u>\$ 100</u>
21 <u>Over \$25,000 and not exceeding 100,000</u>	<u>125</u>
22 <u>Over \$100,000 and not exceeding 500,000</u>	<u>200</u>
23 <u>Over \$500,000 and not exceeding 1,000,000</u>	<u>300</u>

1	<u>Over \$1,000,000 and not exceeding 1,500,000</u>	<u>400</u>
2	<u>Over \$1,500,000 and not exceeding 2,000,000</u>	<u>500</u>
3	<u>Over \$2,000,000 and not exceeding 2,500,000</u>	<u>600</u>
4	<u>Over \$2,500,000 and not exceeding 3,000,000</u>	<u>700</u>
5	<u>Over \$3,000,000 and not exceeding 3,500,000</u>	<u>800</u>
6	<u>Over \$3,500,000 and not exceeding 4,000,000</u>	<u>900</u>
7	<u>Over \$4,000,000 and not exceeding 4,500,000</u>	<u>1,000</u>
8	<u>Over \$4,500,000 and not exceeding 5,000,000</u>	<u>1,100</u>
9	<u>For each additional \$500,000, \$250 in addition to \$1,100.</u>	

- 10 (2) For amending the articles of organization in the case of a domestic limited liability
11 company or amending the registration in the case of a foreign limited liability
12 company, a filing fee of ~~ten~~ fifty dollars; together with the appropriate fee set out in
13 subdivision (1) of this section if the amendment is to increase the amount of capital;
- 14 (3) For filing articles of dissolution, issuing a certificate of dissolution and canceling the
15 certificate of organization, ten dollars;
- 16 (4) For filing a statement of change of address of registered office or change of registered
17 agent, or both, ten dollars;
- 18 (5) For filing articles of merger or consolidation, ~~ten~~ fifty dollars;
- 19 (6) An annual tax of fifty dollars, due and payable January second of each year. This tax
20 is delinquent if not paid by February first and a penalty of fifty dollars shall also be
21 assessed.

22 Section 23. That § 47-34A-212 be amended to read as follows:

23 47-34A-212. The secretary of state shall charge and collect for:

- 24 (a) Filing the first annual report if the total agreed contribution of the limited liability
25 company are:

1	Agreed Contribution	Fee
2	Not in excess of \$50,000	\$ 90
3	\$50,001, to \$100,000	\$150
4	In excess of \$100,000	\$150 for first \$100,000, plus \$.50 for each additional \$1,000

5	<u>\$25,000 or less</u>	<u>\$ 100</u>
6	<u>Over \$25,000 and not exceeding 100,000</u>	<u>125</u>
7	<u>Over \$100,000 and not exceeding 500,000</u>	<u>200</u>
8	<u>Over \$500,000 and not exceeding 1,000,000</u>	<u>300</u>
9	<u>Over \$1,000,000 and not exceeding 1,500,000</u>	<u>400</u>
10	<u>Over \$1,500,000 and not exceeding 2,000,000</u>	<u>500</u>
11	<u>Over \$2,000,000 and not exceeding 2,500,000</u>	<u>600</u>
12	<u>Over \$2,500,000 and not exceeding 3,000,000</u>	<u>700</u>
13	<u>Over \$3,000,000 and not exceeding 3,500,000</u>	<u>800</u>
14	<u>Over \$3,500,000 and not exceeding 4,000,000</u>	<u>900</u>
15	<u>Over \$4,000,000 and not exceeding 4,500,000</u>	<u>1,000</u>
16	<u>Over \$4,500,000 and not exceeding 5,000,000</u>	<u>1,100</u>
17	<u>For each additional \$500,000, \$250 in addition to \$1,100.</u>	

18 The maximum amount charged under this subsection together with any subsequent
 19 payments under subsection (b) may not exceed sixteen thousand dollars. The filing fee
 20 required pursuant to this subsection is not applicable if the limited liability company
 21 has previously paid the fee required pursuant to subdivision 47-34-54(1).

22 (b) Filing any subsequent annual report that reflects additional contribution in excess of
 23 those stated in the last prior report, any additional fee necessary to make the
 24 cumulative fee match the cumulative agreed contributions as provided in subsection
 25 (a); above the agreed contributions as set forth in the last previous annual report

1 consistent with subsection (a).

2 (c) A reporting fee of fifty dollars, due and payable with the filing of all annual report,
3 after the first annual report required in § 47-34A-211(c).

4 Section 24. That § 47-34A-811 be amended to read as follows:

5 47-34A-811. (a) A limited liability company administratively dissolved may apply to the
6 secretary of state for reinstatement after the effective date of dissolution. The applicant shall
7 submit with the application the appropriate filing fee. The secretary of state shall base filing fees
8 on the total agreed contribution of the limited liability company as provided in § 47-34A-212,
9 plus any delinquent annual reports and fees for the period prior to the reinstatement application.

10 The application must:

- 11 (1) Recite the name of the company and the effective date of its administrative
12 dissolution;
- 13 (2) State that the ground for dissolution either did not exist or have been eliminated;
- 14 (3) State that the company's name satisfies the requirements of § 47-34A-105; and
- 15 (4) Contain a certificate from the appropriate state authority reciting that all taxes owed
16 by the company have been paid.

17 (b) If the secretary of state determines that the application contains the information required
18 by subsection (a) and that the information is correct, the secretary of state shall cancel the
19 certificate of dissolution and prepare a certificate of reinstatement that recites this determination
20 and the effective date of reinstatement, file the original of the certificate, and serve the company
21 with a copy of the certificate.

22 (c) When reinstatement is effective, it relates back to and takes effect as of the effective date
23 of the administrative dissolution and the company may resume its business as if the administrative
24 dissolution had never occurred.

Section 25. That § 47-34A-1206 be amended to read as follows:

47-34A-1206. The secretary of state may charge the following fees:

- (a) For amending or restating the articles of organization in the case of a domestic limited liability company or amending the registration in the case of a foreign limited liability company, a filing fee of ~~ten~~ fifty dollars;
- (b) For filing articles of termination, ten dollars;
- (c) For filing articles of merger, ~~ten~~ fifty dollars;
- (d) For filing a statement of dissociation, ten dollars;
- (e) For filing an application to reserve a name, ~~fifteen~~ twenty dollars;
- (f) For issuing a certificate of existence, ~~ten~~ fifteen dollars;
- (g) For filing an application for registration of name, one dollar for each month, or fraction thereof, between the date of filing such application and December thirty-first of the calendar year in which such application is filed;
- (h) For filing an annual renewal of registration, a limited liability company which has in effect a registration of its name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars. A renewal application may be filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following year;
- (i) For acting as agent for service of process the secretary of state shall charge and collect at the time of such service ~~five~~ twenty-five dollars which may be recoverable as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

1 Each limited liability company, domestic or foreign, that fails or refused to file its annual
2 report for any year within the time prescribed is subject to a penalty of fifty dollars to be assessed
3 by the secretary of state.

4 Section 26. That § 48-7-206.1 be amended to read as follows:

5 48-7-206.1. The provisions of § 1-8-10 notwithstanding, the fee for filing any document
6 required under this chapter with the secretary of state is ~~ninety~~ one hundred dollars.

7 Section 27. That § 48-7A-1003 be amended to read as follows:

8 48-7A-1003. (a) A limited liability partnership, and a foreign limited liability partnership
9 authorized to transact business in this state, shall file an annual report in the Office of the
10 Secretary of State which contains:

- 11 (1) The name of the limited liability partnership and the state or other jurisdiction under
12 whose laws the foreign limited liability partnership is formed;
13 (2) The street address of the partnership's chief executive office and, if different, the street
14 address of an office of the partnership in this state, if any; and
15 (3) If the partnership does not have an office in this state, the name and street address of
16 the partnership's current agent for service of process.

17 (b) An annual report must be filed with the secretary of state by the date specified by the
18 secretary of state in each year following the calendar year in which a partnership files a statement
19 of qualification or a foreign partnership becomes authorized to transact business in this state.

20 (c) The secretary of state may revoke the statement of qualification of a partnership that fails
21 to file an annual report when due or pay the required filing fee. To do so, the secretary of state
22 shall provide the partnership at least sixty days' written notice of intent to revoke the statement.
23 The notice must be mailed to the partnership at its chief executive office set forth in the last filed
24 statement of qualification or annual report. The notice must specify the annual report that has

1 not been filed, the fee that has not been paid, and the effective date of the revocation. The
2 revocation is not effective if the annual report is filed and the fee is paid before the effective date
3 of the revocation.

4 (d) A revocation under subsection (c) only affects a partnership's status as a limited liability
5 partnership and is not an event of dissolution of the partnership.

6 (e) A partnership whose statement of qualification has been revoked may apply to the
7 secretary of state for reinstatement within two years after the effective date of the revocation.

8 The applicant shall submit with the application the filing fee of one hundred dollars, plus any
9 delinquent annual reports and fees for the period prior to the reinstatement application. The
10 application must state:

11 (1) The name of the partnership and the effective date of the revocation; and

12 (2) That the ground for revocation either did not exist or has been corrected.

13 (f) A reinstatement under subsection (e) relates back to and takes effect as of the effective
14 date of the revocation, and the partnership's status as a limited liability partnership continues as
15 if the revocation had never occurred.

16 Section 28. That § 48-7A-1208 be amended to read as follows:

17 48-7A-1208. The provisions of § 1-8-10 notwithstanding, the fee for filing the statements
18 and reports provided for in the following sections with the secretary of state is as follows:

19 (1) Section 48-7A-303, Statement of Authority, ~~ninety~~ one hundred dollars;

20 (2) Section 48-7A-304, Statement of Denial, ten dollars;

21 (3) Section 48-7A-704, Statement of Dissociation, ten dollars;

22 (4) Section 48-7A-805, Statement of Dissolution, ten dollars;

23 (5) Section 48-7A-907, Statement of Merger, ~~ten~~ fifty dollars;

24 (6) Section 48-7A-1001, Statement of Qualification, ~~ninety~~ one hundred dollars;

(7) Section 48-7A-1003, Annual Report, ~~twenty-five~~ thirty dollars; and

(8) Section 48-7A-1102, Statement of Foreign Qualification, ~~ninety~~ one hundred dollars;
and

(9) Filing any other statement, ten dollars.

Each limited liability partnership, domestic or foreign, that fails or refused to file its annual report for any year within the time prescribed is subject to a penalty of fifty dollars to be assessed by the secretary of state.

Section 29. That § 57A-9-525 be amended to read as follows:

57A-9-525. (a) Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b), is the amount specified in subsection (c), if applicable, plus:

(1) ~~Thirteen~~ Twenty dollars if the record is communicated in writing and consists of one page, and four dollars for ~~each~~ additional page pages. One dollar of this fee shall be deposited into the financing statement filing fee fund;

(2) ~~Eleven~~ Fifteen dollars if the record is communicated by internet. One dollar of this fee shall be deposited into the financing statement filing fee fund; and

(3) Twenty dollars if the record is communicated by another medium authorized by filing-office rule.

(b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the following kind is the amount specified in subsection (c), if applicable, plus:

(1) Thirty dollars if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) Thirty dollars if the financing statement indicates that it is filed in connection with a

1 manufactured-home transaction.

2 (c) Except as otherwise provided in subsection (e), if a record is communicated in writing
3 or electronically, the fee for each name more than one required to be indexed is two dollars.

4 (d) The fee for responding to a request for information from the filing office, including for
5 issuing a certificate showing whether there is on file any financing statement naming a particular
6 debtor, is:

7 (1) ~~Twelve~~ Twenty dollars if the request is communicated in writing; and

8 (2) Ten dollars if the request is communicated by ~~another medium~~ internet authorized by
9 filing-office rule.

10 Upon request the filing officer shall furnish a copy of any filed financing statement or
11 statement of assignment for a uniform fee of one dollar per page.

12 (e) This section does not require a fee with respect to a record of a mortgage which is
13 effective as a financing statement filed as a fixture filing or as a financing statement covering
14 as-extracted collateral or timber to be cut under § 57A-9-502(c). However, the recording and
15 satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

16 Section 30. That chapter 57A-9 be amended by adding thereto a NEW SECTION to read
17 as follows:

18 The annual registration fee for the crop or livestock effective finance statement microfiche
19 master list is one hundred twenty dollars.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

258I0523

HOUSE TAXATION COMMITTEE ENGROSSED NO. **SB 133** - 02/25/2003

Introduced by: Senators Duenwald, Abdallah, and Dempster and Representatives Teupel, Davis, Hackl, Juhnke, Lintz, Peterson (Jim), and Rhoden

1 FOR AN ACT ENTITLED, An Act to permit the county levy and rural fire protection district
2 levy to be increased for fire fighting purposes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-13 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Notwithstanding the provisions of § 10-13-35, any county that levies a property tax for fire
7 fighting pursuant to § 34-31-3 or rural fire protection district that levies a property tax for fire
8 fighting pursuant to § 34-31A-22 may increase the total amount of revenue payable from such
9 taxes on real property. This increase may be made to the taxes payable in either 2004 or 2005,
10 or both. For taxes payable in 2006, and each year thereafter, the total amount of revenue payable
11 from taxes on real property pursuant to §§ 34-31-3, 34-31A-21, and 34-31A-32 may increase
12 no more than the amount provided in §§ 10-13-35 to 10-13-36, inclusive.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

345I0679

SENATE ENGROSSED NO. **SB 154** - 02/10/2003

Introduced by: Senators Bogue, Abdallah, Diedrich (Larry), LaPointe, McCracken, and
Reedy and Representatives Peterson (Bill), Dykstra, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to authorize certain interstate shipments of wine, to
2 establish certain penalties, and to collect sales tax.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Notwithstanding any other provision of law, any person who is at least twenty-one
5 years of age may purchase and receive wine from another state as provided in this section if the
6 wine is not in distribution in this state and the wine comes from a winery that is located in a state
7 that affords South Dakota wineries an equal reciprocal shipping privilege, or a winery located
8 in South Dakota. The person shall place an order with a licensee as defined in subdivision
9 35-4-2(3) or (5). The licensee shall order the wine through a wholesaler licensed pursuant to
10 subdivision 35-4-2(2) and the wholesaler shall arrange the purchase of wine. The licensee shall
11 inform the purchaser of the cost of the wine, the amount of any tax that would apply to the
12 purchase pursuant to § 35-5-3, the amount of sales tax that would apply, and the amount of
13 charges for freight and handling. The licensee shall collect the total amount due from the
14 customer before ordering the wine through the wholesaler. After receiving the order for the wine
15 from the licensed retailer the wholesaler shall arrange for the wine to be shipped directly to the



1 licensee who placed the order for the purchaser. Wine purchased pursuant to this Act may only
2 be delivered and received by the purchaser from a licensee as defined in subdivision 35-4-2(3)
3 or (5).

4 Section 2. If the wholesaler orders twelve or less cases of a particular brand of wine for an
5 individual purchaser in one calendar year pursuant to this section, no registration fee pursuant
6 to chapter 39-13 may be imposed.

7 Section 3. No person may receive more than twelve cases of wine, containing no more than
8 nine liters per case, in any calendar year for personal use from another state under this Act. No
9 person who receives wine under this Act may resell any of the wine. However, if the delivery of
10 the wine does not result in a completed sale to the person who placed the original order, the
11 licensee may sell the wine in the ordinary course of business. It is a Class 2 misdemeanor for any
12 person to receive more than twelve cases of wine during a calendar year in violation of this Act.
13 It is a Class 2 misdemeanor for any person to resell or attempt to resell any wine obtained
14 pursuant to this Act. The Department of Revenue shall promulgate rules pursuant to chapter
15 1-26 to provide for the reporting and tracking of information related to the sale of wine under
16 this Act and to prescribe forms for the implementation of this Act.

17 Section 4. Any licensee who holds a farm winery license pursuant to § 35-12-2 may ship no
18 more than twelve cases of wine per person per calendar year. A case may contain no more than
19 nine liters per case in any one shipment. Any wine sold may only be for personal use and not for
20 resale. The wine may only be sold directly to a resident of another state if the state to which the
21 wine is sent allows residents of the state to receive wine sent from outside that state.

22 Section 5. No person in the business of selling alcoholic beverages may ship or cause to be
23 shipped any alcoholic beverage to any South Dakota resident who does not hold a license issued
24 pursuant to chapter 35-4. The department shall, for the first offense, send a certified letter to any

- 1 person who violates this section and order such person to cease and desist any shipments of
- 2 alcoholic beverages to South Dakota residents. Any subsequent violation of this section is a
- 3 Class 6 felony.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

534I0490

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB 165** - 02/27/2003

Introduced by: Senators Diedrich (Larry), Brown, Dempster, Olson (Ed), and Reedy and
Representatives Solum, Kroger, and Murschel

1 FOR AN ACT ENTITLED, An Act to establish the United States census estimates as the basis
2 upon which liquor licenses may be issued.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 35-4-11 be amended to read as follows:

5 35-4-11. If not fixed by ordinance, the governing board of any municipality may on or before
6 the first of September in each year, by resolution, determine the number of on-sale and off-sale
7 licenses it will approve for the ensuing calendar year, and the fees to be charged for the various
8 classifications of licenses. The number of on-sale licenses issued may not exceed three each for
9 the first one thousand of population or fraction thereof and not exceed one each of such licenses
10 for each additional one thousand five hundred of population or fraction thereof. The number of
11 licenses allowable may not be less than the total number of licenses allowable or issued as of
12 July 1, 1981. The municipal governing board shall at such meeting establish the fee for on-sale
13 licenses pursuant to subdivisions 35-4-2(4) and (13). ~~Such~~ The fee shall apply applies to all such
14 on-sale licenses issued in the ensuing calendar year. The quotas established in this section do not
15 apply to licenses issued pursuant to subdivisions 35-4-2(16) and (17).



1 For the purposes of this section, population is equal to ninety percent of the population
2 estimates published by the United States Census Bureau for each even-numbered year, except
3 for the decennial year. For a decennial year, population is equal to the amount determined by the
4 decennial federal census. No license issued pursuant to this section which exceeds the number
5 of licenses that would have been issued upon the decennial federal census may be denied solely
6 by reason that the license exceeds the number of licenses authorized by the decennial federal
7 census.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

743I0576

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 188** - 02/26/2003

Introduced by: Senators Diedrich (Larry), Abdallah, Brown, Duxbury, Jaspers, McCracken, Moore, Olson (Ed), Schoenbeck, Sutton (Duane), and Symens and Representatives Dykstra, Begalka, Burg, Hargens, Konold, Peterson (Jim), Sebert, Solum, and Williamson

1 FOR AN ACT ENTITLED, An Act to provide a credit against certain taxes paid by railroads
2 for the replacement and repair of rail lines and to revise certain provisions regarding the
3 distribution of the assessed value of a railroad.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 10-28 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any publicly operated railroad or railway corporation operating over rail lines located within
8 this state may claim a credit against the tax levied on such rail lines for amounts that the railroad
9 or railway corporation has certified as having been expended in the replacement and repair of
10 such rail lines. Only those expenses of a capital nature may be certified as an expense eligible for
11 a credit pursuant to this section. The certification required by this section shall be on forms
12 provided by the Department of Revenue. The labor and material expenses certified pursuant to
13 this section shall be itemized separately. The credit provided in this section shall be applied
14 proportionally across the railroad's entire mainline within this state. The credit shall be applied



1 to tax liability over a three-year period in an amount equal to thirty-three and one-third percent
2 the first year following certification; thirty-three and one-third percent of such an amount shall
3 carry forward into the second year following certification; and thirty-three and one-third percent
4 shall carry forward into the third year following certification. Each year's carryover shall be
5 accumulated as a tax credit with other years' annual tax credits. No credit may be given for the
6 repair or replacement of railway line necessitated by washout, fire, or train derailment. If any rail
7 line goes over ten million gross ton miles per mile annually in a calendar year, the rail line may
8 not receive a credit pursuant to this section in the following calendar year.

9 Section 2. That § 10-28-16 be amended to read as follows:

10 10-28-16. The Department of Revenue shall, on or before the fourth Monday in August, each
11 year, transmit to the county auditor of each county through which any railroad runs, a statement
12 showing the length of main track, of main line or lines, and the branches thereof and sidetracks
13 within such county, and the assessed value based on a statewide formula that weights traffic (ton
14 miles) ~~thirty-three and one-third~~ seventy-five percent and miles of track in the county by ~~sixty-six~~
15 ~~and two-thirds~~ twenty-five percent. The county auditor shall then distribute the value to each
16 taxing district where the line runs on a per mile basis within the county.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0759

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 202** - 02/26/2003

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to revise certain provisions to comply with the requirements
2 of the Juvenile Justice and Delinquency Act.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-7A-1 be amended to read as follows:

5 26-7A-1. Terms used in this chapter and in chapters 26-8A, 26-8B, and 26-8C mean:

6 (1) "Abused or neglected child," a child as defined in § 26-8A-2;

7 (2) "Adjudicatory hearing," a hearing to determine whether the allegations of a petition
8 alleging that a child is abused or neglected are supported by clear and convincing
9 evidence or whether the allegations of a petition alleging a child to be in need of
10 supervision or a delinquent are supported by evidence beyond a reasonable doubt;

11 (3) "Adult," a person eighteen years of age or over, except any person under twenty-one
12 years of age who is under the continuing jurisdiction of the court or who is before the
13 court for an alleged delinquent act committed before the person's eighteenth birthday;

14 (4) "Advisory hearing," the initial hearing conducted by the court to inform the child and
15 the child's parents, guardian, custodian, or other interested parties of their statutory



1 and constitutional rights;

2 (5) "Association," an association, institution, or corporation which includes in its
3 purposes the care or disposition of children coming within the provisions of this
4 chapter or chapter 26-8A, 26-8B, or 26-8C;

5 (6) "Child," a person less than eighteen years of age and any person under twenty-one
6 years of age who is under the continuing jurisdiction of the court or who is before the
7 court for an alleged delinquent act committed before the person's eighteenth birthday;

8 (7) "Child in need of supervision," a child as defined in § 26-8B-2;

9 (8) "Commit," to transfer custody of a person;

10 (9) "Conservator," a conservator of a child as defined in § 29A-1-201;

11 (10) "Court" or "juvenile court," the circuit court;

12 (11) "Custodian," any foster parent, employee of a public or private residential home or
13 facility, other person legally responsible for a child's welfare in a residential setting,
14 or person providing in-home or out-of-home care; for purposes of this definition,
15 out-of-home care means any day care as defined in §§ 26-6-14, 26-6-14.1, and
16 26-6-14.8;

17 (12) "Delinquent child," a child as defined in § 26-8C-2;

18 (13) "Department of Social Services" or "department," the South Dakota Department of
19 Social Services;

20 (14) "Deprivation of custody," transfer of custody of a child by the court from the child's
21 parents, guardian, or other custodian to another person, agency, department, or
22 institution;

23 (15) "Detention," the temporary custody of a child in secured physically restricting
24 facilities for children, sight and sound separated from adult prisoners;

- 1 (16) "Detention facility," a secured, physically-restricting facility ~~where~~ designed, staffed,
2 and operated for children ~~are physically~~ and separated by sight and sound from adult
3 prisoners or a facility for children in the same building or secure perimeter as an adult
4 jail or lockup, where children are sight and sound separated from adult prisoners,
5 where staff in the detention facility are trained and certified by the entity operating
6 facility to work with children, and the facility had been approved as a colocated
7 facility by the Office of Juvenile Justice and Delinquency Prevention;
- 8 (17) "Dispositional hearing," a hearing after adjudication at which the court makes an
9 interim or final decision in the case;
- 10 (18) "Guardian," a guardian of a child as defined in § 29A-1-201;
- 11 (19) "Guardian ad litem," a representative of a child as defined in subdivision 15-6-17(c),
12 including a court-appointed special advocate for a child;
- 13 (20) "Intake officer," a judge of a circuit court or the court's designee who may not be a
14 court services officer, law enforcement officer, or prosecuting attorney. For purposes
15 of chapters 26-7A, 26-8A, 26-8B, and 26-8C, intake officers may administer oaths
16 or affirmations as provided by chapter 18-3;
- 17 (21) "Minor," a person who has not reached his or her eighteenth birthday;
- 18 (22) "Parents," biological or adoptive parents of a child, including either parent, any single
19 or surviving parent, and any custodial or noncustodial parent, jointly or severally;
- 20 (23) "Protective supervision," a legal status created by court order under which an alleged
21 or adjudicated abused or neglected child is permitted to remain in the home of the
22 child's parents, guardian, or custodian or is placed with a relative or other suitable
23 person and supervision and assistance is provided by the court, Department of Social
24 Services, or another agency designated by the court;

(24) "Qualified mental health professional," a person as defined in § 27A-1-3;

(25) "Shelter," a physically-unrestricting home or facility for temporary care of a child;

(26) "Temporary care," the care given to a child in temporary custody;

(27) "Temporary custody," the physical and legal control of a child prior to final disposition.

Section 2. That § 26-7A-23 be amended to read as follows:

26-7A-23. A board of county commissioners may provide and maintain at public expense temporary care, shelter, or detention facilities, ~~physically~~ sight and sound separated from adult prisoners, where children coming within the provisions of this chapter or chapter 26-8A, 26-8B, 26-8C, or §§ 26-11A-13 and 26-11A-14, may, if necessary or appropriate, be placed for temporary care, temporary custody, shelter, or detention as designated by the court, or temporary detention or shelter by the Department of Corrections. Sections 26-11A-19 and 26-7A-94 governs the costs of custodial care of children.

Section 3. That § 26-7A-26 be amended to read as follows:

26-7A-26. No apparent, alleged, or adjudicated abused or neglected child may be securely detained at any time in a jail, lockup, or in any type of detention or temporary care facility containing adult prisoners. An apparent, alleged, or adjudicated child in need of supervision may not be securely detained in a jail, lockup, or in any type of detention or temporary care facility containing adult prisoners except for approved colocated detention centers as defined in § 26-7A-1 and as authorized in §§ 26-8B-3, 26-8B-6, and 26-7A-20.

~~An apparent, or alleged, or adjudicated child in need of supervision or an apparent, alleged, or adjudicated delinquent child fourteen years of age or older may be held in detention in an adult lockup or jail if physically separated from adult prisoners subject to any restrictions under this chapter or chapter 26-8A, 26-8B, or 26-8C.~~

1 ~~An apparent, alleged, or adjudicated child in need of supervision or an apparent, alleged, or~~
2 ~~adjudicated~~ delinquent child may be held in an adult lockup or jail for up to six hours for
3 purposes of identification, processing, interrogation, transfer to juvenile facility, or release to
4 parents if the child is physically sight and sound separated from adult prisoners.

5 In any area not designated as a metropolitan statistical area by the United States Bureau of
6 the Census, an apparent or alleged delinquent child may be held in an adult lockup or jail for up
7 to forty-eight hours excluding holidays and weekends or until the temporary custody hearing,
8 whichever is earlier, if the facility has been certified by the Department of Corrections as
9 providing sight and sound separation of juveniles from adults and if no suitable juvenile facility
10 is available.

11 A child who has been transferred to adult court pursuant to § 26-11-4 or a child who is being
12 tried in circuit court as an adult pursuant to § 26-11-3.1 may be held ~~in detention~~ in an adult
13 lockup or jail if physically separated from adult prisoners.

14 A child who has attained the age of majority who is under the continuing jurisdiction of the
15 court may be held ~~in detention~~ in an adult jail or lockup.

16 A child under the age of eighteen years who has been transferred to adult court pursuant to
17 § 26-11-3.1 or 26-11-4 and who has been convicted of a felony as an adult may be held ~~in~~
18 ~~detention~~ in an adult jail or lockup.

19 Section 4. That § 26-8B-2 be amended to read as follows:

20 26-8B-2. In this chapter and chapter 26-7A, the term, child in need of supervision, means:

- 21 (1) Any child of compulsory school age who is habitually absent from school without
22 legal excuse;
- 23 (2) Any child who has run away from home or is otherwise beyond the control of the
24 child's parent, guardian, or custodian;

1 (3) Any child whose behavior or condition endangers the child's own welfare or the
2 welfare of others; ~~or~~

3 (4) Any child who has violated any federal, state, or local law or regulation for which
4 there is not a penalty of a criminal nature for an adult, except violations of subdivision
5 34-46-2(2), or petty offenses; or

6 (5) Any child who has violated § 35-9-2.

7 Section 5. That § 26-8B-3 be amended to read as follows:

8 26-8B-3. An apparent or alleged child in need of supervision taken into temporary custody
9 by a law enforcement officer prior to a temporary custody hearing shall be released to the child's
10 parents, guardian, or custodian unless the parents, guardian, or custodian cannot be located or
11 in the judgment of the intake officer are not suitable to receive the child, in which case the child
12 shall be placed in shelter. A child may be placed in detention for no more than twenty-four hours,
13 excluding Saturdays, Sundays, and court holidays, if the intake officer finds that the parents,
14 guardian, or custodian are not available or are not suitable to receive the child, and finds at least
15 one of the following circumstances exists:

16 (1) The child has failed to comply with court services or a court-ordered program;

17 (2) The child is being held for another jurisdiction as a parole or probation violator, as a
18 runaway or as a person under court-ordered detention;

19 (3) The child has a demonstrated propensity to run away from the child's home, from
20 court-ordered placement outside of the child's home or from agencies charged with
21 providing temporary care for the child;

22 (4) The child is under court-ordered home detention in this jurisdiction; or

23 (5) There are specific, articulated circumstances which justify the detention for the
24 protection of the child from potentially immediate harm to the child or to others.

1 The shelter or detention authorized shall be the least restrictive alternative available. The
2 child may be held in detention up to an additional twenty-four hours following the temporary
3 custody hearing pending transfer to shelter or release.

4 If the child is accused of or has been found in violation of a valid court order, the child may
5 be placed in detention for more than twenty-four hours, if a temporary custody hearing, pursuant
6 to § 26-7A-14, is held within twenty-four hours of the child being placed in a detention facility,
7 an interview is conducted with the child, and a written assessment of the child's immediate needs
8 is provided at the temporary custody hearing. The interview and assessment may be conducted
9 by law enforcement, states attorney, court services, or other public employee. The child may not
10 be held in detention greater than seventy-two hours unless revocation proceedings have been
11 initiated.

12 If the child is being held for another jurisdiction as a parole or probation violator, as runaway
13 or as a person under court-ordered detention, the child may be placed in detention for more than
14 twenty-four hours, and up to seven days, if a temporary custody hearing, pursuant to
15 § 26-7A-14, is held within twenty-four hours of the child being placed in a detention facility.

16 Section 6. That § 26-8B-6 be amended to read as follows:

17 26-8B-6. If a child has been adjudicated as a child in need of supervision, the court shall enter
18 a decree of disposition according to the least restrictive alternative available in keeping with the
19 best interests of the child. The decree shall contain one or more of the following alternatives:

20 (1) The court may place the child on probation or under protective supervision in the
21 custody of one or both parents, guardian, custodian, relative, or another suitable
22 person under conditions imposed by the court;

23 (2) The court may require as a condition of probation that the child report for assignment
24 to a supervised work program, provided the child is not placed in a detention facility

1 and is not deprived of the schooling that is appropriate to the child's age, needs, and
2 specific rehabilitative goals. The supervised work program shall be of a constructive
3 nature designed to promote rehabilitation, shall be appropriate to the age level and
4 physical ability of the child and shall be combined with counseling by a court services
5 officer or other guidance personnel. The supervised work program assignment shall
6 be made for a period of time consistent with the child's best interests, but may not
7 exceed ninety days;

8 (3) If the court finds that the child has violated a valid court order, the court may place
9 the child in a detention facility, for purposes of disposition if:

10 (a) The child is not deprived of the schooling that is appropriate for the child's age,
11 needs, and specific rehabilitative goals;

12 (b) The child had a due process hearing before the order was issued; and

13 (c) ~~Before the issuance of such order, a local interagency team, authorized~~
14 ~~pursuant to § 27A-15-56 shall review the behavior of the child and the~~
15 ~~circumstances under which such child was brought before the court and made~~
16 ~~subject to such order; determine the reasons for the behavior that caused such~~
17 ~~child to be brought before the court and made subject to such order; determine~~
18 ~~that all dispositions, including treatment, other than placement in a detention~~
19 ~~facility or the Department of Corrections, have been exhausted or are clearly~~
20 ~~inappropriate; and submit to the court a written report stating the results of the~~
21 ~~review and determinations made~~ A plan of disposition from a court services
22 officer is provided to the court;

23 (4) The court may require the child to pay for any damage done to property or for
24 medical expenses under conditions set by the court if payment can be enforced

without serious hardship or injustice to the child;

(5) The court may commit the child to the Department of Corrections for placement in a juvenile correctional facility, foster home, group home, group care center, or residential treatment center pursuant to chapter 26-11A. Prior to placement in a juvenile correctional facility, an interagency team comprised of representatives from the Department of Human Services, Department of Social Services, Department of Education and Cultural Affairs, ~~and the Department of Corrections,~~ and the Unified Judicial System shall make a written finding that placement at a Department of Corrections facility is the least restrictive placement commensurate with the best interests of the child. Subsequent placement in any other Department of Corrections facility may be authorized without an interagency review;

(6) The court may place a child in an alternative educational program;

(7) The court may order the child to be examined and treated at the Human Services Center;

(8) The court may impose a fine not to exceed five hundred dollars;

(9) The court may order the suspension or revocation of the child's driving privilege or restrict the privilege in such manner as it sees fit or as required by § 32-12-52.4;

(10) The court may assess or charge the same costs and fees as permitted by §§ 16-2-41, 23-3-52, 23A-27-26, and 23A-27-27 against the child, parent, guardian, custodian, or other party responsible for the child.

No adjudicated child in need of supervision may be incarcerated in a detention facility except as provided in subdivision (3) or (5) of this section.

Section 7. That § 26-8C-2 be amended to read as follows:

26-8C-2. In this chapter and chapter 26-7A, the term, delinquent child, means any child ten

1 years of age or older who, regardless of where the violation occurred, has violated any federal,
2 state, or local law or regulation for which there is a penalty of a criminal nature for an adult,
3 except state or municipal hunting, fishing, boating, park, or traffic laws that are classified as
4 misdemeanors, or petty offenses or any violation of § 35-9-2.

5 Section 8. That § 26-11-1 be amended to read as follows:

6 26-11-1. If any child under the age of eighteen years is arrested, with or without a warrant,
7 for a violation of any law or municipal ordinance for which the child is not subject to proceedings
8 as a child in need of supervision as defined in § 26-8B-2 or a delinquent child as defined in
9 § 26-8C-2 or for a violation of subdivision 34-46-2(2), the child shall be brought before the
10 judge of a court having jurisdiction over the offense and proceedings shall be conducted as
11 though the child were eighteen years of age or older.

12 A child under the age of eighteen years, subject to proceedings pursuant to this section and
13 accused of a Class 2 misdemeanor, may be held in or sentenced to ~~an adult lockup or jail~~ or a
14 detention or temporary care facility for up to seven days if physically sight and sound separated
15 from adult prisoners. No child may be held in or sentenced to a detention facility for a violation
16 of subdivision 34-46-2(2).

17 A child under the age of eighteen years, subject to proceedings pursuant to this section and
18 accused of a Class 1 misdemeanor, may be held in or sentenced to ~~an adult lockup or jail~~ or a
19 detention or temporary care facility for up to thirty days if physically sight and sound separated
20 from adult prisoners.

21 Section 9. That § 24-11-1 be amended to read as follows:

22 24-11-1. The ~~word "jail"~~ term, jail, as used in this chapter includes any building or place
23 provided or used by any county, municipality, or civil township for the detention of adult persons
24 convicted or accused of the violation of any law of this state, any ordinance or bylaw of any

1 municipality; or civil township, or any rule or regulation of any board, commission, or public
2 officer having the effect of law; or for the detention of adult persons held as witnesses or
3 committed for contempts, except juvenile detention facilities located outside jails and lockups
4 and approved collocated detention facilities operated by counties. The governing body or
5 commission responsible for the operation of a jail shall classify its jails based upon the types of
6 persons detained therein and the maximum length of detention of persons in such jails.

7 Section 10. That § 24-11-16 be amended to read as follows:

8 24-11-16. The sheriff or other officer having charge of any jail shall keep jail records. These
9 records shall be carefully kept and preserved and delivered to such officer's successor in office.
10 ~~Such~~ The officer shall exhibit these records to any judge of the circuit court ~~when~~ if requested
11 to do so, and to the Department of Corrections for the purposes on monitoring compliance with
12 the requirements of the Juvenile Justice and Delinquency Prevention Act pursuant to § 1-15-28.

13 Section 11. That § 32-12-52.4 be amended to read as follows:

14 32-12-52.4. Upon a first conviction or a first adjudication ~~of delinquency~~ as a child in need
15 of supervision for a violation of § 35-9-2 while in a motor vehicle, the court shall suspend the
16 driver license or driving privilege of any driver of a vehicle who was under the age of twenty-one
17 when the offense occurred, for a period of six months.

18 Upon a second or subsequent conviction or a second or subsequent adjudication ~~of~~
19 ~~delinquency~~ as a child in need of supervision for a violation of § 35-9-2 while in a motor vehicle,
20 the court shall suspend the driver license or driving privilege of any driver of a vehicle who was
21 under the age of twenty-one when the offense occurred, for a period of one year. For any offense
22 under this section, the court may issue an order permitting the person to operate a motor vehicle
23 for purposes of the person's employment, attendance at school, or attendance at counseling
24 programs.

1 Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified
2 Judicial System shall notify the Department of Commerce and Regulation of any conviction or
3 adjudication for a violation, while in a motor vehicle, of § 35-9-2 or chapter 32-23. The period
4 of suspension shall begin on the date the person's suspended driver license is received by the
5 court or the Department of Commerce and Regulation. At the expiration of the period of
6 suspension, a person may make application to have the license reinstated and pay the license fee
7 as prescribed in § 32-12-47.1.

8 Section 12. That § 26-7A-15 be amended to read as follows:

9 26-7A-15. The officer or party who takes a child into temporary custody, with or without
10 a court order, except under a court order issued during a noticed hearing after an action has been
11 commenced, shall immediately, without unnecessary delay in keeping with the circumstances,
12 inform the child's parents, guardian, or custodian of the temporary custody and of the right to
13 a prompt hearing by the court to determine whether temporary custody should be continued. If
14 the child's parents, guardian, or custodian cannot be located after reasonable inquiry, the officer
15 or party taking temporary custody of the child shall report that fact and the circumstances
16 immediately to the state's attorney. The state's attorney shall notify the child's parents, guardian,
17 or custodian, without unnecessary delay, of the time, date, and place of the temporary custody
18 hearing. The hearing shall be held within forty-eight hours if it concerns any apparent abused or
19 neglected child or if it concerns any apparent delinquent child pursuant to § 26-8C-3 or within
20 twenty-four hours if it concerns ~~any apparent delinquent child pursuant to § 26-8C-3~~ or any
21 apparent child in need of supervision pursuant to § 26-8B-3, excluding Saturdays, Sundays, and
22 court holidays, after taking the child into temporary custody, unless extended by order of the
23 court. Failure to notify the child's parents, guardian, or custodian of the temporary custody
24 hearing is not cause for delay of the hearing if the child is represented by an attorney at the

1 hearing.

2 Section 13. That § 26-7A-20 be amended to read as follows:

3 26-7A-20. If the child is an apparent, alleged, or adjudicated child in need of supervision,
4 after the temporary custody hearing the court shall release the child from temporary custody to
5 the child's parents, guardian, or custodian, with or without restriction or condition or upon
6 written promise of the parents, guardian, or custodian regarding care and supervision of the
7 child, unless the court finds that the child should continue to be held in temporary custody for
8 any of the following reasons:

9 (1) The child has failed to comply with court services or a court-ordered program;

10 (2) The child is being held for another jurisdiction as a parole or probation violator, as a
11 runaway, or as a child under other court-ordered detention;

12 (3) The child has a demonstrated propensity to run away from the child's home, from
13 court-ordered placement outside of the child's home, or from agencies charged with
14 providing temporary care for the child;

15 (4) The child is under court-ordered home detention in this jurisdiction;

16 (5) There are specific, articulated circumstances which justify the detention for the
17 protection of the child from potentially immediate harm to the child's self or to others;

18 or

19 (6) The child is a material witness, the detention is necessary because of implications of
20 tampering with the child, and an affidavit so stating is filed with the court.

21 An apparent, alleged, or adjudicated child in need of supervision may not be placed in
22 detention for longer than twenty-four hours after the temporary custody hearing unless the child
23 has been accused of or has been found in violation of a valid court order.

24 Section 14. That § 26-9-2 be amended to read as follows:

1 26-9-2. When any person is prosecuted under § 26-9-1, and the charge against such person
2 concerns the abuse or neglect of a child, the offense for convenience may be termed contributory
3 abuse or contributory neglect. ~~When~~ If it concerns the delinquency of a child, for convenience
4 it may be termed contributory delinquency. If it concerns a child in need of supervision, for
5 convenience it may be termed contributing to the child's status as a child in need of supervision.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0758

SENATE ENGROSSED NO. **SB 216** - 02/21/2003

Introduced by: The Committee on Health and Human Services at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to create a senior citizen prescription drug benefit program.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. There is hereby created a senior citizen prescription drug benefit program within
4 the State of South Dakota. The purpose of the program is to negotiate the purchase of
5 prescription drugs to be offered at a reduced cost to the eligible participants. The program shall
6 be open to any resident of the state who is age sixty-five and older and any person meeting the
7 eligibility criteria for a disability as defined in Title II of the Social Security Amendments of 1954
8 as amended to January 1, 2003, excluding those persons eligible for benefits under Title XIX.

9 Section 2. The program shall be administered by the Bureau of Personnel. The commissioner
10 of personnel may enter into agreements with private entities and cooperate with other local,
11 state, or federal agencies to implement the purposes of the program. The commissioner shall
12 promulgate rules pursuant to chapter 1-26 regarding various discounts on the purchase of
13 pharmaceuticals for participating members and regarding dispensing and intervention fees.

14 Section 3. The Bureau of Personnel may contract to create a preferred drug list and negotiate
15 pharmaceutical prices for the benefit of participating members and pharmacies.

16 Section 4. The provisions of this Act are repealed July 1, 2005.

